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ABSTRACT

Elected officials, justice professionals, courts and other institutions of our society are contributing to a reevaluation of juvenile justice information policy. The tenet that juveniles who commit crimes are not culpable is being challenged as the public's safety and economic well being is increasingly threatened by children engaged in criminal behavior. This document reviews the criminal justice information policy as it relates to confidentiality and juvenile justice in an attempt to identify those qualities of the policy which protect juveniles in a way that reflects the principles and character of the society. Part 1 describes the history and philosophy of the juvenile justice system with particular attention to juvenile record confidentiality. Part 2 focuses on the creation and maintenance of juvenile justice records from law enforcement and court system perspectives. Part 3 reviews disclosure of records including sealing and purging according to federal and state laws, sharing of records with the juvenile and adult justice systems, and accessibility and disclosure of records to subject, researchers, organizations, media, and the public. Part 4 focuses on confidentiality and media access, while Part 5 reviews the debate over confidentiality versus publicity. (BL)

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Criminal Justice Information Policy

PRIVACY AND JUVENILE JUSTICE RECORDS

Report prepared by
Robert R. Belair, Attorney
Washington, DC

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EXECUTIVE SUMMARY

This is a report about the confidentiality of "arrest" and "conviction" information (juvenile justice record information) relating to youths who are 18 years of age or younger.[1] It comes at a critical time when criminal justice officials, political figures, scholars and members of the public are calling for a fundamental re-examination of our nation's commitment to the confidential treatment of juvenile record information.[2]

Confidentiality and Principles of Juvenile Justice Philosophy

During most of this Century it has been a matter of policy that juvenile justice information be kept strictly confidential and used, with narrow exceptions, only within the juvenile and criminal justice systems. Throughout this period the belief in confidentiality has rested upon two basic principles of juvenile justice. The first principle holds that juveniles are not to be considered criminally responsible for their crimes. According to this theory, children have neither the understanding nor the criminal motive of adults. Thus, they cannot form the criminal intent that is necessary for criminal culpability. Of course, children may actually commit criminal acts, but--much like the insane--children should not be considered guilty of crimes.

The second principle followed naturally from the first. If a child who commits a crime is not culpable and is not to be punished, then how should society react to this event? With treatment. Children who have committed anti-social or criminal acts must receive treatment and rehabilitation. Since children are impressionable, malleable and not yet hardened to the criminal life, they were thought to be perfect candidates for such treatment.

These two basic principles of the juvenile justice system--non-culpability and rehabilitation--produced pressures for confidentiality: non-culpability because it is unfair and inappropriate to brand a child as a criminal; and rehabilitation because such branding interferes with a child's rehabilitation and reassimilation into the mainstream of society.

Unfortunately, faith in the principles of non-culpability and rehabilitation upon which it rests, has eroded. Three developments seem to be responsible. First, a perceived epidemic of juvenile crime has provoked cries for tougher measures against juveniles. Second, both statistics and anecdotal experience suggest that rehabilitation is not working. Juvenile recidivism rates are high and seemingly going higher. Third, during the 1960's and 1970's, the Supreme Court reformed the juvenile court process to make it both more formal and more fair. However, in the process, the Court also made it possible for the first time to consider a juvenile adjudication of delinquency as equivalent to an adult determination of criminal guilt.

Part One of the report indicates that confidentiality in our society is seldom justifiable as an end in itself; therefore, proponents of juvenile justice confidentiality must be able to demonstrate that the degree of confidentiality now enjoyed by juvenile offenders is warranted; presumably because confidentiality fosters rehabilitation and because efforts at rehabilitation are desirable and realistic. In the absence of such a demonstration, it is likely that juvenile justice records, or at least those that pertain to "older" juveniles, will eventually be subject to the same confidentiality standards which apply to adult criminal record information. In any event, over the course of the next decade, policymakers are likely to take a careful and skeptical look at the purpose, practicability and effect of confidentiality in juvenile justice proceedings.

Summary of Current Standards and Practice

With this as its premise, the report in five parts addresses both law and practice relating to the creation, maintenance, use and disclosure of juvenile record information.[3] Part One describes the history and philosophy of the juvenile justice system, with particular attention to juvenile record confidentiality. Part Two discusses agency practice and legal standards affecting the creation and content of juvenile records. Part Three covers disclosure and confidentiality of juvenile record data. Part Four addresses two controversial media issues which are a part of the confidentiality debate: the media's right to attend juvenile court proceedings, and the media's right to publish the names of juveniles who are arrested or convicted. Lastly, Part Five identifies and analyzes the policy arguments for and against the confidential handling of juvenile record information.

Creation of Juvenile Justice Records

The creation of juvenile records by the police remains an informal art in which police agencies retain substantial discretion. The creation of juvenile records by the juvenile courts is, by contrast, a far more formal and directed process. Part Two indicates that existing policies which restrict the fingerprinting of juveniles and require the segregation of juvenile and adult records restrict adult courts and law enforcement agencies from obtaining juvenile data. There are two ironies to this result. First, both adult courts and law enforcement agencies are entitled, as a matter of law, to obtain such data. Second, at the time that these restrictive policies were adopted they had little practical effect because the technology was not generally available to combine or link adult and juvenile records. Today, such technology is readily available, but fingerprinting and segregation policies--not confidentiality policies--restrict such linkages and contribute to the existence of a "two-track" system of justice.

Disclosure of Juvenile Justice Records

Part Three discusses the affect that confidentiality policies have upon the ability of different types of recipients to obtain juvenile justice data. It concludes that juvenile record information is widely available within the juvenile justice system; that in theory, it is almost as available within the adult criminal justice system, but, in practice, is often unavailable; that juvenile record information surprisingly is not available to record subjects in many jurisdictions; that juvenile records are available, with restrictions, to researchers; and that the basic rule continues to be--with exceptions--that juvenile data is unavailable to governmental, non-criminal justice agencies, private employers, the media and other members of the public. However, confidentiality strictures that previously applied to non-juvenile and non-criminal justice agencies are being modified and relaxed, at least as to juvenile conviction data.

Part Four discusses the fact that the media does not have a constitutional right to attend juvenile court proceedings; however, some states and courts now permit the media to attend, particularly when juveniles are tried for serious offenses. In some cases the media may be restricted from disclosing juvenile identities obtained from attending the court proceeding.

Further, in some states the media is authorized to publish a juvenile's name if the juvenile is accused or convicted of a serious offense. Moreover, a recent Supreme Court decision holds that if the media obtains a juvenile's name from any public or lawful source, a state cannot prohibit the media from publishing that name. To do so would abridge the media's First Amendment rights.

Key Elements of the Debate Over Confidentiality

Part Five identifies six arguments which are most often raised in the debate over the confidentiality of juvenile record data: (1) publicity "rewards" criminal conduct; (2) publicity traumatizes erring juveniles; (3) publicity deprives juveniles of opportunities for employment and other benefits; (4) publicity is inherently unfair; (5) publicity promotes public safety; and (6) publicity promotes oversight and supervision of the juvenile justice system.

Without trying to provide definitive solutions for these arguments, the discussion suggests that the outcome turns on three basic questions.

1. What kind of confidentiality and disclosure policy is most likely to have a positive effect on the juvenile offenders' future conduct, and does the effect depend upon the age of the juvenile or the extent and nature of his juvenile record? Assuming that the goal is to reduce juvenile recidivism and increase the chances that juvenile offenders will become constructive members of society, the key question is whether confidentiality or disclosure promotes this goal.

Since it appears that disclosure policies may have little measurable impact upon rehabilitation, it is appropriate to look to other factors in setting disclosure policy.

2. A second issue--quite apart from the future conduct of juvenile offenders--is how much does the public (or segments of the public, such as criminal justice agencies, licensing boards or employers) need to know about specific juvenile offenders in order to assure the public's physical safety and confidence; and how much needs to be known to assure society's efficient economic operation; or the effective administration of juvenile and criminal justice; or to assure productive statistical and longitudinal research?

Here too, there are no dispositive answers. Certainly there needs to be (and are) different disclosure policies for different segments of the public, depending upon the criticality and nature of each group's needs for juvenile record data and their accountability and reliability in handling this data.

3. The third issue on which the juvenile confidentiality debate turns is essentially a moral issue. Regardless of the practical effects of confidentiality or disclosure on juveniles or on society, is it fair and proper for society to publicly brand a young person on the basis of his misdeeds? While any opinion is subjective and controversial, it appears that many observers still hold to

the view that it is both unfair and improper to publicly stigmatize children for their misdeeds--at least so long as the juvenile is "younger" rather than "older," and so long as his misdeeds are not continually repeated or are not of a violent or heinous nature.

Juvenile Justice Confidentiality Issues Needing Attention in the 1980's

Perhaps this report's primary conclusion is that extensive and difficult work lies ahead in framing a new juvenile justice information policy for the nation. The discussion and analysis in this report suggest that the following issues need attention.

1. Identifying the interests served by juvenile justice confidentiality. Specifically, policymakers need to examine whether the principles of juvenile non-culpability and rehabilitation have vitality and, if so, whether confidentiality promotes these principles.
2. Defining the age of a juvenile. It may be that the traditional principles of juvenile justice--non-culpability and rehabilitation--make sense when applied to 12-year-olds but make less sense when applied to 17-year-olds.
3. Developing policies for the creation, maintenance and disclosure of juvenile justice record information by law enforcement agencies. Existing policies are more likely to cover juvenile court records than juvenile police records and, within the category of juvenile police records, far more likely to cover fingerprint records than narrative records.
4. Developing policies for access to and for challenge and correction of juvenile justice records by juveniles and their attorneys and parents and guardians.
5. Establishing interfaces and connections between juvenile and adult record systems. Existing statutory policies mandating the strict segregation of juvenile and adult records should be examined. The interface of juvenile and adult systems may promote statistical and longitudinal research, may improve oversight and manage-

ment of juvenile and criminal justice institutions, and may promote the effective implementation of first offender, career offender and other innovative prosecutorial and sentencing programs. The existing two-track system has been sharply criticized because it increases the possibility that chronic and serious juvenile offenders will reach the adult system with a clean slate.

6. Developing policies for the disclosure of juvenile justice data outside of the juvenile and criminal justice systems based upon the nature of the juvenile's alleged conduct; its frequency; its contemporaneousness; the nature of the disposition; and the identity and purpose of the potential recipient.

7. Sealing and purging policies for juvenile records. An examination of the merits of existing policies which customarily require the juvenile to obtain a court order issued pursuant to the judge's discretion, versus more automatic and less discretionary sealing and purging based upon the juvenile's establishment of a clean record period.

PART ONE

THE PHILOSOPHY OF THE JUVENILE JUSTICE SYSTEM

Part One of this report provides background for the report's discussion of the handling of juvenile justice information and describes the history and philosophy of the juvenile justice system, identifying current forces that are working to redefine that philosophy. Part One discusses these developments in terms of their effect upon the handling of juvenile justice records.

There are two chapters in this part. The first chapter recounts the history of the juvenile court system, and describes the development of the twin principles upon which the system has rested: (1) the non-criminal responsibility of juvenile offenders; and (2) the desirability and practicability of rehabilitation for juvenile offenders. The chapter concludes that both of these principles mandate confidentiality in juvenile justice records.

Chapter Two identifies and analyzes the current forces that are causing a re-examination of the dual principles of non-culpability and rehabilitation and thereby creating demands for a relaxation of confidentiality standards. The chapter discusses the amount and nature of juvenile crime and identifies recent changes in the juvenile justice system that have been wrought by Supreme Court decisions and by state legislation. The conclusion is that the basis for juvenile justice confidentiality has changed and that the level of confidentiality in the juvenile justice system, at least for "older" juveniles, will soon be no greater than the level of confidentiality in the adult criminal justice system unless proponents of juvenile justice confidentiality are successful in identifying compelling and distinct societal interests served by juvenile justice confidentiality.

Chapter One

THE HISTORY AND PHILOSOPHY OF THE JUVENILE JUSTICE SYSTEM

The following briefly recounts the history and philosophy of the juvenile justice system in America. It describes the successful efforts by reformers at the turn of this Century to create a separate system of justice for juveniles based on the complementary principles that juveniles are not criminally responsible for their wrongdoing and that such juveniles can and should be rehabilitated. These principles of non-culpability and rehabilitation created a compelling demand that juvenile justice records be kept confidential.

History of the Juvenile Court

When the English system of courts was transplanted to this country, it included the chancery court; and chancery courts, as courts of equity, were charged, among other things, with the protection of wayward or delinquent children.[4] However, chancery courts did not have jurisdiction over children who were accused of committing serious criminal acts. Throughout the 19th Century, children who committed serious criminal acts and who had reached the age of criminal responsibility (seven at common law and ten in some states) were tried as adults.[5] As population and urbanization increased so too did juvenile crime, and with it the frequency and severity of juvenile punishment.

By the end of the 19th Century reformers were calling for a separate system of juvenile courts to deal in a more humane, less criminal and presumably more effective manner with this growing problem. The kind of incident which incited reformers' wrath is chronicled in a New Jersey court opinion captioned State v. Guild, published in 1828.[6] A 12-year-old boy named James Guild was tried for killing a woman named Catherine Beakes. A jury found him guilty of murder and he was sentenced to death. The boy was subsequently hanged.

As early as 1869, Massachusetts adopted a statute which required that an officer of the State Board of Charity be present at all criminal proceedings involving juveniles, "to protect the juvenile's interest." In 1877 another Massachusetts statute established special sessions of the criminal courts for juveniles with separate dockets and records.[7]

In 1899 the Illinois Legislature established the first entirely separate and independent juvenile court system.[8] The statute provided that all juveniles, whether accused of conduct which would not be criminal for an adult such as truancy, or conduct which would be criminal if done by an adult, were to be handled by the same court. Its "hearings were to be informal and non-public records confidential, children detained apart from adults, a probation staff appointed. In short, children were not to be treated as criminals nor dealt with by the process used for criminals."[9]

Purposes of Juvenile Court Reforms

Two purposes were to be served by these reforms. First, the juvenile courts would not stigmatize children as criminals or punish them for criminal conduct. According to this theory of non-culpability, children have neither the understanding nor the criminal motive of adults. Thus, they cannot form the criminal intent, what the courts call the mens rea, that is necessary for criminal culpability. Of course, children may actually commit criminal acts, but--much like the insane-- children should not be considered guilty of crimes. What follows from this analysis is that children--again like the insane--should not be punished for acts that they neither understand nor intend.

The second purpose of the reforms follows naturally from the first. If a child who commits a crime is not culpable and is not to be punished then how should society react to this event? The answer is treatment. Children who have committed anti-social or criminal acts are thought to need treatment and rehabilitation. Since children are impressionable, malleable and not yet hardened to the criminal life, they are considered perfect candidates to respond to such treatment.

The Supreme Court has described the early conception of the juvenile court as a paternal, noncriminal process. "The early conception of the Juvenile Court proceeding was one in which a fatherly judge touches the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition and in which in extreme situations, benevolent and wise institutions of the state provided guidance and help, to save him from a downward career."[10]

The fervor with which many courts, even well into the middle of this century, proclaimed that juvenile court proceedings were noncriminal and aimed at treatment and rehabilitation of the erring youth is illustrated in these remarks by a Pennsylvania court.

> "The proceedings [in juvenile court] are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. Their purpose is not penal but protective--aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the State acting as parens patriae. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life."[11]

Many of the original juvenile court acts at their inception did not provide for the confidentiality of juvenile court proceedings or records.[12] A comprehensive survey in 1920, for example, found only seven states which banned the publication of information about juvenile court proceedings.[13] However, juvenile court proponents soon came to appreciate that confidentiality was essential. The two basic principles of the juvenile justice system--non-culpability and rehabilitation--generated strong pressures for confidentiality: non-culpability because it is unfair and inappropriate to brand a child as a criminal; and rehabilitation because such branding interferes with a child's rehabilitation and reassimilation into society.

A law review commentary published in 1909, at the peak of the juvenile justice reform movement, explained the importance that confidentiality plays in the implementation of the theories of non-culpability and rehabilitation.

> "To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it to protect it from the stigma--this is the work which is now being accomplished ... [by the juvenile courts]".[14]

Chapter Two

RECENT DEVELOPMENTS AFFECTING JUVENILE JUSTICE PHILOSOPHY

This chapter provides a statistical profile of the current frequency and nature of juvenile crime and points out that the public believes that a juvenile crime wave is underway. This perception has led to appeals for an end to special provisions for juvenile confidentiality.

At the same time, and perhaps for the same reason, the courts and the legislatures have cast critical eyes on the philosophical underpinnings of the juvenile justice system. The concepts of juvenile non-culpability and rehabilitation are being challenged by those who believe that juvenile offenders should be made criminally responsible for their wrongdoing. This rethinking of the philosophy and goals of the juvenile justice system inevitably undermines support for juvenile justice confidentiality.

If juvenile records are to continue to be subject to stricter confidentiality standards than adult criminal history records, proponents of juvenile justice confidentiality will have to identify and justify the societal interests served by such confidentiality.

The Frequency and Character of Juvenile Crime

The incidence and nature of juvenile crime is a complex subject that resists quick judgments or sensational conclusions. Numbers and percentages alone do not tell the whole story. Still, by any standard, the numbers and percentages are startling.

In 1979, juveniles up to 18 years of age accounted for about 20 percent of all violent crime arrests, 44 percent of all serious property crime arrests and 39 percent of all overall serious crime arrests (up from about

20 percent in 1965).[15] Juveniles aged 10 to 17 constitute 13.6 percent of the total population. When the statistics for youthful offenders (ages 18-20) are added in, the percentages are even more sobering. In 1979 children and youth ages 12 to 20 accounted for 38 percent of all violent crime arrests, 62 percent of all serious property crime arrests and 57 percent of all overall serious crime arrests.[16]

When actual numbers are substituted for percentages the statistics become still more dramatic. In 1980 the FBI reported approximately 9.7 million total arrests, of which approximately 2.1 million were juveniles aged 10 to 17. According to self-reporting surveys, each year males age 12 to 18 commit 3.3 million aggravated assaults, 2.5 million grand thefts and 6.1 million breakings and enterings.[17] The numbers for crime in the schools are also staggering. An estimated 282,000 students are attacked at school in a typical one-month period, and an estimated 5,200 teachers are physically attacked at school each month.[18]

Disagreement exists as to whether juvenile crime is presently on the increase or in decline. However, the best judgment of experts is that juvenile crime increased significantly from 1960 through 1975 and, at least as to violent crime, has perhaps decreased modestly since that date.[19] What is known with more certainty is that, despite fluctuations in the juvenile crime rate, a substantial percentage of violent, random street crime--the crime which so terrorizes and marks our society--and an even higher percentage of crimes against personal property, are committed by the young. As one commentator has said, "[C]rime in the United States is primarily the province of the young."[20] And, as regards crime by the young, it is primarily the province of males rather than females; disproportionately minority youth rather than white youth (especially as to violent crime); and youths from poor backgrounds, rather than from middle class backgrounds.[21]

Public Perceptions, and Demands for Relaxation of Juvenile Confidentiality

Perhaps the real conclusion that should emerge from any discussion of juvenile crime statistics is not so much a statement about the incidence or nature of juvenile crime, as it is about the public's perception of the incidence and nature of juvenile crime. Most experts agree that the media and the public perceive that a juvenile "crime wave" is underway, and in some areas a virtual "reign of terror" by armed and dangerous juveniles and youth gangs.[22]

Given this perceived epidemic of juvenile crime, it is no surprise that criminal justice officials, political figures and the public are calling for tougher measures against juveniles, including a relaxation of secrecy standards. Indeed, as long ago as 1957, J. Edgar Hoover issued a rousing call for a relaxation of juvenile confidentiality strictures.

> "Gang-style ferocity--once the evil domain of hardened adult criminals--now enters chiefly in cliques of teenage brigands. Their individual and gang exploits rival the savagery of the veteran desperadoes of bygone days."
>
> * * *
>
> "Publicizing the names as well as crimes for public scrutiny releases of past records to appropriate law enforcement officials, and fingerprinting for future identification are all necessary procedures in the war on flagrant violators regardless of age. Local police and citizens have a right to know the identities of the potential threats to public order within their communities."[23]

In 1982, Martin Guggenheim, a professor of family and juvenile law at New York University Law School, said in an interview that a relaxation of confidentiality provisions is "long overdue." "We should eliminate confidentiality" he said. "It has been a protection for terrible abuses."[24] According to critics like Professor Guggenheim, the theory of confidentiality does not apply to the tougher juvenile criminals of today.

Even juvenile court judges have begun to call for a reform and balancing of confidentiality laws in the face of the supposed rising tide of juvenile crime. At a recent symposium James J. Delaney, a juvenile and family court judge from Brighton, Colorado, expressed the view that a juvenile who commits a crime forfeits his rights of privacy--in just the same way that adult offenders forfeit their right of privacy.

> "When a juvenile steals an automobile and wrecks it, does he still have the same right to privacy as another who does not offend?"
>
> * * *
>
> "[W]e must address the issue of juvenile records and confidentiality with reason. There must be a balancing of rights and obligations, on the part of both the juvenile and society."[25]

Judicial Challenge to the Juvenile Justice Philosophy

The increase in the amount and severity of juvenile crime has also led scholars, and eventually the courts and legislatures, to take a skeptical look at the basic principles of the juvenile justice system--non-culpability and rehabilitation. As long ago as the mid-1950's some commentators were beginning to ask tough questions about the wisdom and efficacy of the juvenile justice philosophy. The Annual Survey of American Law for 1954 cited the increasing crime rate among juveniles and noted that this had "given impetus to those who would call for a solution in terms of strict retribution and deterrent penalties." It predicted that "[A] sharp clash of divergent penal philosophies may well be in the offing."[26]

By the mid-1960's the Supreme Court had begun to react to the percussion of the public policy debate. The Court worried that the juvenile court process offered juveniles the worst of both worlds. Juveniles were deprived of the constitutional protections provided to defendants in criminal proceedings and yet they seemed to receive little of the rehabilitative treatment supposedly provided by juvenile courts.[27]

In 1966, in a case called *Kent v. United States*, the Court issued the first of a series of landmark decisions that, when completed, would reform the juvenile justice process so that it more closely resembled the criminal justice process. In *Kent*, the Supreme Court considered whether certain procedural safeguards should be met before a juvenile court could transfer a 16-year-old accused of forcible entry, robbery and rape to an adult court.

The Court decided that, "[W]hile there can be no doubt of the original laudable purpose of the juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical performance to make tolerable the immunity of the process from the reach of the consitutional guarantees applicable to adults."[28] *Kent*, affirmed that juveniles have a right to counsel in juvenile proceedings; provided for a right to a hearing before a juvenile court waives jurisdiction; and provided for a right of access by the juvenile's attorney to records relied on by the court.

In *Kent*, and the decisions which followed during the period 1966 to 1975, the Supreme Court required juvenile courts to provide juveniles with most of the basic constitutional rights and protections which applied in adult criminal prosecutions.[29] *In re Gault*, (1967) reaffirmed a juvenile's right to counsel; provided a right to notice of charges; and a right to confront and cross-examine witnesses.[30] *In re Winship*, (1970) held that juvenile courts must use the "beyond a reasonable doubt" standard applicable to adult criminal proceedings to make a determination of a juvenile's "guilt."[31] Breed v. Jones, (1975) held that juvenile courts must adhere to the double jeopardy protections offered by the Fifth Amendment.[32] Indeed, by the time that the Supreme Court was done, juveniles enjoyed every federal constitutional protection afforded adult criminal defendants, except the unqualified right to a jury trial.[33]

The Supreme Court's message in these cases was quite simple. The Court was saying that if, as a practical matter even if not in theory, juveniles were being punished by juvenile court dispositions, then juveniles should enjoy the same constitutional, procedural protections enjoyed by adults.

Judicial Challenges to Juvenile Justice Confidentiality

As the conception of the juvenile court as a noncriminal, rehabilitative process faded, it was to be expected that the concept that juvenile records must be kept confidential in order to foster these concepts would also fade. Not surprisingly, the Supreme Court's challenge to paternalism in the juvenile courts included a skeptical review of juvenile justice confidentiality. In 1967 in In re Gault, the Supreme Court expressed considerable cynicism about the reality, if not the wisdom, of confidentiality.

> "As the Supreme Court of Arizona phrased it in the present case, the summary procedures of Juvenile Courts are sometimes defended by a statement that it is the law's policy to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past. This claim of secrecy, however, is more rhetoric than reality."[34]

In every instance over the last 20 years in which juvenile record confidentiality has conflicted with another constitutional right, the Supreme Court has said that confidentiality must recede. In Davis v. Alaska, for example, the Supreme Court held that an adult defendant, who had been prosecuted for grand larceny and burglary, had been denied his constitutional right of confrontation by a lower court's protective order which prevented him from cross-examining a prosecution witness who happened to be a juvenile. The lower court issued the order because the defendant's cross-examination would have revealed that the witness was on probation from a juvenile adjudication of delinquency. The Court rejected the State's argument that the secrecy of these juvenile records must be preserved in order to further the "rehabilitative goals of the juvenile correctional procedures."[35] The Supreme Court concluded that "the State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding so vital a constitutional right as the effective cross-examination for bias of an adverse witness."[36]

In Oklahoma Publishing v. District Court,[37] and Smith v. Daily Mail Publishing Co.,[38] the Supreme Court held that a court order and a statute, respectively, prohibiting the publication of a juvenile defendant's name and photograph or name only, was an impermissible violation of the First Amendment. In both cases the media had lawfully obtained the name and photograph of the juvenile, and thus in both cases this information was already in the public domain. Although neither decision holds that the media has a right of access to juvenile court proceedings or records, both do hold that once information is lawfully obtained by the media, the First Amendment interest in a free press must prevail over the interest in preserving the anonymity of juvenile defendants.

> "The sole interest advanced by the State to justify its criminal statute is to protect the anonymity of the juvenile offender. It is asserted that confidentiality will further his rehabilitation because publication of the name may encourage further antisocial conduct and also may cause the juvenile to lose future

> employment or suffer other consequences for this single offense. The important rights created by the First Amendment must be considered [and] must prevail over the state's interest in protecting juveniles..."[39]

These decisions do not mean that the Supreme Court has abandoned an interest in upholding the confidentiality of juvenile proceedings or records. And indeed, in virtually all of its juvenile justice decisions the Court has acknowledged the importance of confidentiality, even while holding that confidentiality does not prevail over other constitutional interests.[40] However, what these decisions do demonstrate is that the concept of confidentiality, like the concepts of non-culpability and rehabilitation from which it partly springs, is no longer sacrosanct.

Empirical and Legislative Challenges to Juvenile Justice Philosophy

Of course, the judiciary is not alone in challenging the principles of the juvenile justice system. Empirical studies seem to bear out that rehabilitative efforts aimed at juvenile offenders have not worked very well. Studies of juvenile recidivism are admittedly inconclusive, and they are hampered by the fact that confidentiality policies impede the combining of juvenile justice and adult criminal history records.[41] However, even some conservative estimates indicate that about 35 percent of the juveniles found to be delinquent are subsequently found delinquent for another offense.[42] Other juvenile recidivism studies show much higher rates, sometimes exceeding 60 percent.[43]

In any event, there are two points on which nearly everyone agrees: (1) present juvenile recidivism rates are alarmingly high; and (2) juvenile offenders seem to have higher recidivism rates than do adults.[44] Certainly many, and probably most juveniles who have experienced the "benefit" of juvenile courts and corrections treatment are not thereby rehabilitated and many commit subsequent crimes.

Recent Legislation Authorizes Punishment of Juvenile Offenders

Increasing numbers of experts are also questioning whether rehabilitation even ought to be the system's goal. It has been argued that juvenile offenders should be considered criminally responsible; that they have a "right" to punishment and to be spared the inappropriate intervention, manipulation and exercise of discretion and dominion that comes with attempts to treat and rehabilitate juveniles.[45]

Juvenile justice legislation adopted in Washington state in 1977 calls for "punishment commensurate with the age, crime and criminal history of the juvenile offender." Commentators at a national symposium on juvenile justice in 1977 noted the sharp contrast between the "punishment" language in this statute and the "rehabilitative" language in traditional juvenile justice statutes.

> "This statute stands in contrast to the more common and traditional juvenile justice statutes which stress treatment and rehabilitation."[46]

They conclude that the Washington statute indicates that "a great change appears to have occurred."[47]

The growing popularity of the notion that juveniles should be punished for their crimes is also reflected in recent legislation which permits juveniles to be tried as adults at an increasingly young age. In the same year that Washington state amended its legislation, New York's legislature responded to urgent calls from police and the public for help in combatting teenage crime. The New York legislature amended its juvenile code to permit children 15 or over to be tried for homicides as adults.[48] More recently, in July, 1982, New Jersey amended its already strict juvenile justice code to permit juveniles 14 years old and older to be tried as adults in cases such as murder, kidnapping or sexual assault.[49]

Of course, not everyone is happy with this approach. The National Council on Crime and Delinquency sharply criticized the New Jersey law. They condemned the adult trial provisions stating that they were adopted,

> "...in spite of the fact that there is no evidence that the adult correctional system works either to deter crime or rehabilitate offenders. In its present overcrowded and crisis-ridden condition, it is doubtful that the adult system can offer the juvenile offender much more than confinement at best and homosexual rape and other brutality at worst."[50]

Supreme Court Reforms and Legislation Change the Perception of a Juvenile "Conviction"

Ironically, the notion that juveniles should have criminal responsibility for their wrongdoing has received a boost from the Supreme Court's juvenile justice reforms. By extending many of the adult criminal due process protections to juvenile trials, the Court has imbued the juvenile trial with the elements of fairness, impartiality and dispositiveness customarily associated with adult trials. Thus, when a juvenile is found delinquent today there is reason for confidence in the fairness and accuracy of that judgment.

If juveniles are tried by standards that were previously only used when making determinations of criminal responsibility, and if the juvenile is found "guilty" according to such standards, then it is easier to argue that the consequences of a juvenile's conviction--including the recordkeeping consequences-- should be the same as the consequences of an adult conviction. In the adult system, conviction record information is largely available to the public on the theory that conviction records, unlike arrest records, are a reliable indicator of wrongdoing; that the criminal has "waived" his right to privacy in that data; and that, in any event, the public interest in those who violate society's laws outweighs the offender's privacy interest.

Increased confidence in the reliability of juvenile delinquency adjudications makes it more attractive to argue that the waiver and public interest considerations which apply to conviction records should apply, as well, to juvenile delinquency records. Not surprisingly, this change in the perception of the meaning of a juvenile delinquency adjudication has led to recent changes in state juvenile justice record statutes. Prior to 1975, juvenile justice statutes seldom distinguished between juvenile "arrest" and delinquency records. Both enjoyed a similar, high degree of confidentiality. However, over the last ten years, seven states--Alaska, Delaware, Georgia, Mississippi, Nevada, New Jersey and Pennsylvania--have modified their juvenile codes to authorize the public release of the names and delinquency record dates of juveniles adjudicated delinquent who either have a prior record or who have committed a serious offense.[51]

Basis for Confidentiality May be Re-examined

In summing up the findings of the 1977 national symposium, the commentators concluded that the symposium indicates that the traditional principles of non-culpability and rehabilitation are losing currency. Specifically, they identified, among other things, the following developments:

1. The doctrines of non-culpability and rehabilitation are under serious attack, both from the courts and from state legislatures.
2. The idea of "punishing" juveniles is being seriously reconsidered.
3. As America's population ages, and as elderly citizens are victimized or fear being victimized by juvenile crime, the incarceration of juvenile offenders is likely to become increasingly popular.[52]

Because confidentiality in our society is seldom justifiable as an end in itself, proponents of juvenile justice confidentiality will be called upon to demonstrate that the degree of confidentiality now enjoyed by juvenile offenders is warranted; presumably because confidentiality fosters rehabilitation and because efforts at rehabilitation are desirable and realistic. In the absence of such a demonstration, it is likely that juvenile justice records, or at least those that pertain to "older" juveniles, will eventually be subject to the same confidentiality standards that apply to adult criminal record information. In any event, proponents of juvenile justice confidentiality should expect that over the course of the next decade, policymakers will take a careful and skeptical look at the purpose, practicability and effect of confidentiality in juvenile justice proceedings and records.

PART TWO

THE CREATION AND MAINTENANCE OF JUVENILE JUSTICE RECORDS

This part of the report deals with both law and practice as they affect the creation and maintenance of juvenile justice records.

Chapter One describes the way in which *police departments* create and maintain records about their contacts with juvenile suspects and offenders. The chapter concludes that the creation and maintenance of juvenile records by the police remains an informal act in which police agencies have significant discretion. To date, state legislatures have not dictated the circumstances under which police agencies can create a juvenile record, nor have they set standards for the content of those records or the amount of time or circumstances under which they must be maintained.

However, most legislatures have set standards for the fingerprinting of juveniles. In so doing, legislatures greatly influence the use and sharing of juvenile data because in most adult criminal history systems fingerprints are required to obtain or, at least, to verify juvenile history data.

Chapter Two describes the way in which *juvenile courts* create and maintain records about their contacts with juvenile offenders. The chapter includes a brief description of how the juvenile courts operate, and describes the types of records customarily created by juvenile courts and the role of state law in setting standards for such recordkeeping. Lastly, the affect of state statutes which forbid the co-mingling of juvenile and adult records are discussed.

Chapter One

LAW ENFORCEMENT AGENCY RECORDS

This chapter describes the way in which police departments customarily create and maintain records about their contacts with juvenile suspects and offenders. Historically, the courts and legislatures have given the police almost unfettered discretion to create and maintain any type of information about juvenile suspects or alleged offenders. The result has been a very informal system producing records which are an amalgam of adult investigative and arrest records. The courts and legislatures have placed restraints on these records only at the dissemination stage.

The legislatures' only significant intervention to date has been to regulate the creation and sharing of juvenile fingerprint records. However, regulation of the creation and use of fingerprint records is critical. In modern, adult justice information systems fingerprint records are essential for the location and verification of record entries.

Discretion to Create Records

Historically, law enforcement agencies have had wide discretion to create and maintain records of their contact with juveniles. Police discretion to create juvenile justice records is merely an extension of their discretion to apprehend and refer to juvenile court juveniles who are engaged in criminal or anti-social acts. While juvenile codes in many states instruct police agencies that they can only "take into custody" juveniles, not "arrest" them, and can only "refer" juveniles to juvenile courts, not arraign or book them, this is merely a change in vocabulary.[53]

Juvenile codes in most states do not disturb traditional police discretion to determine whether a juvenile should be taken into custody and, once in custody, whether he should be released or formally referred to juvenile court.[54] Furthermore, juvenile codes in the vast majority of states do not restrict police discretion as to whether to create a record of their contacts with juveniles, nor do juvenile codes tell police what to put in those records.

According to commentators, five variables usually affect whether a police department establishes a record about a particular juvenile contact: (1) the severity of the act; (2) community attitudes; (3) the juvenile's past conduct; (4) the police officer's background and tolerance; and (5) the juvenile's demeanor after being arrested.[55] A survey done in 1970 of the New York City Police Department's dealings with juveniles found that the "interplay between the juveniles' attitude and the police officers' background and tolerance" is the principal factor in determining whether the officer makes a permanent record of his contact with a particular juvenile.[56] If a police agency decides to make a record of the "arrest," "detention," or other contact, the agency typically completes a card containing spaces for various items of personal identification; a description of the incident; the date of the occurrence; and any subsequent disposition.[57]

Customarily, the space for disposition information is never completed. According to estimates, between fifty and eighty percent of all juveniles taken into custody are immediately released or otherwise handled within the arresting agency.[58] Even when a juvenile is subsequently processed by a juvenile court, the police department is not likely to receive or record the disposition. At present, not one state juvenile code requires law enforcement agencies to include dispositions on juvenile justice arrest or detention records.

In the absence of statutory restrictions, the courts have affirmed that the police have broad discretion to create and maintain juvenile records. In Monroe v. Tielsch, the Washington State Supreme Court refused to order a police department to purge juvenile arrest records, citing the department's legitimate interest in those records.

> "Thus in dealing with juveniles who are frequently as mobile as any other part of our society, law enforcement officials should have the assistance of the past involvement of the juvenile with offenses as reflected by arrests."[59]

Other courts have reached the same conclusion.

> "But in the absence of statute, discretion in the matter belongs to the police. Since they are responsible for our safety, it is for them to decide whose identification papers will be apt to assist them in the performance of their duty."[60]

In Dugan v. Police Department, City of Camden, a New Jersey Superior Court upheld the right of a police department to maintain records of juvenile arrests which included the particular charge on which the juvenile was arrested. The Court found that statutory and constitutional challenges to this authority were without merit.[61] In Cuevas v. Leary,[62] decided by a federal District Court in 1970, a determined challenge by New York legal aide attorneys led to restrictions on the New York Police Department's use of juvenile detention records (called Y.D.-1 cards). The legal aide attorneys charged that many police officers cited youngsters on a Y.D.-1 card for any type of investigative or intelligence contact, with little verification that the particular youngster had done anything wrong. The informality of the system allegedly led to inconsistencies, inaccuracies, and ultimately, unfairness.[63]

The District Court declined to restrict police discretion to create Y.D.-1 cards. However, the Court decided that these cards were analogous to adult investigative records and not so analogous to adult arrest records and, accordingly, the Court approved a settlement whereby the police were restricted from sharing the Y.D.-1 cards outside of the Department.

Fingerprints and Photographs

The only aspect of the creation and maintenance of juvenile justice records by law enforcement agencies which is customarily subject to statutory regulation is the fingerprinting and photographing of juveniles. Of course, whether or not a juvenile can be fingerprinted, and the prints retained in police files, has a very significant impact on the availability and accessibility of juvenile records. Fingerprints are essential for searching record systems, for matching records to record subjects and for use in investigations.

The Federal Youth Corrections Act states that unless a juvenile is prosecuted as an adult, the law enforcement agency which takes the youth into custody--typically the United States Marshal's Office or the FBI--cannot take the youth's fingerprints or photograph unless the agency first obtains the written consent of the judge.[64]

Many state juvenile codes also prohibit or restrict the fingerprinting of juveniles and impose restrictions on the use and disposition of these prints. Provisions of this kind are included in the laws of Alabama, the District of Columbia, Georgia, Illinois, Indiana, Iowa, Kansas, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Oregon, South Carolina, Texas, Vermont, Virginia and Wyoming.

Most of the statutes are similar. They prohibit agencies from taking a juvenile's prints unless he is at least an adolescent and he has committed a serious offense. In addition, many of the statutes prohibit agencies from mixing juvenile and adult prints and require the agency to destroy the prints once the juvenile reaches adulthood, at least, if the juvenile has established a "clean record" period beforehand.

Iowa's statutory fingerprint provision is fairly typical. It provides that a juvenile taken into custody by a criminal justice agency may not be fingerprinted unless: (1) the juvenile court waives jurisdiction so that the juvenile can be prosecuted as an adult; or (2) the juvenile is 14 years of age or older and charged with an offense that would be a felony if committed by an adult. Fingerprints of juveniles are required to be kept separate from those of adults and may not be placed in the state central repository which contains adult criminal records nor sent to any federal fingerprint repository.

Under Iowa law access to fingerprints of juveniles is limited to peace officers when necessary for the discharge of their official duties or when ordered by the juvenile court in individual cases when inspection is "necessary in the public interest." If no petition alleging delinquency is filed or if the outcome of the juvenile court proceedings is favorable to the juvenile, the fingerprints must be removed from the file and destroyed. Even if the juvenile is adjudicated delinquent, Iowa requires that the prints must be destroyed when he or she reaches 21 years of age, provided that the juvenile has not been the subject of a delinquency adjudication or conviction of a felony or aggravated misdemeanor since the juvenile attained 16 years of age.

The only flexibility in Iowa's statutory scheme, and the scheme in many other states, involves latent prints which are found in an investigation. If latent fingerprints are found during the investigation of a crime and a peace officer has reasonable grounds to believe the prints are those of a particular juvenile, the juvenile may be fingerprinted without regard to age or the nature of the offense "for immediate comparison" with the latent prints. If the comparison is negative or the juvenile is not referred to the court, the fingerprints must be destroyed immediately. If the comparison is positive and the child is referred to the court, all copies of the fingerprints must be delivered to the court for disposition.

Nevada's statute is very similar, except that juveniles under the age of 14, charged with offenses that would be felonies if committed by adults, may be fingerprinted with court approval. Nevada also permits fingerprints of juveniles to be sent to the state criminal record repository and to the FBI if the juvenile is found to have committed an offense that would be a felony if committed by an adult. Such fingerprints are to be maintained in files separate from Nevada's adult files, subject to special security precautions, and are to be available only for comparison purposes in the investigation of crime. The Nevada law also authorizes the taking of prints for comparison with latent prints.[65]

New York's family court statute includes detailed provisions for juvenile fingerprint records. A juvenile may be fingerprinted by a police agency if he is at least 13 years old and is charged with an offense that if committed by an adult would be a class A, B or C felony, or is at least 11 years old and is charged with an offense that would be a class A or B felony. All copies of such fingerprints must be forwarded to the state central record repository and no copies may be retained locally.

If the juvenile court adjudication is favorable to the juvenile, the family court must order the repository to destroy the fingerprints. If, on the other hand, the juvenile is adjudicated delinquent for an offense that would be a felony if committed by an adult, the prints may be maintained by the repository in a special juvenile file. If the juvenile reaches age 21, or 3 years after the adjudication, the fingerprints must be destroyed, if there has been no intervening conviction of a criminal offense. Importantly, if the subject is convicted of a criminal offense before the prints are destroyed, the juvenile file is transferred to the repository's adult criminal file and becomes available as part of that file.

Because so many states prohibit local police agencies from sending juvenile fingerprints to the FBI, the Attorney General's Task Force Report on Violent Crime calls upon the Attorney General to encourage states to take appropriate steps to make juvenile fingerprints available to the FBI.[66] New Jersey has recently done just that. Its new juvenile offender law adopted on July 23, 1982, permits the fingerprinting and photographing of most juvenile offenders and establishes a central registry of juvenile offenders for the exchange of prints and information among law enforcement agencies, including the FBI.[67]

Chapter Two

JUVENILE COURT RECORDS

This chapter describes the manner in which juvenile courts customarily create and maintain records about their contacts with juvenile offenders. The chapter begins with a brief description of the size and manner of operation of the juvenile court system.

Juvenile court records, unlike juvenile police records, are closely regulated by legislation and court rule. In most states there are two types of juvenile court records: legal records, which formally describe the juvenile's experience in the court; and social records, which contain information about the juvenile's background and subjective, evaluative information.

In most states, statute law requires that an individual's juvenile record information and his adult criminal history record information not be combined. This prohibition hinders the development of statistical data, creates problems for the effective implementation of first offender and other innovative sentencing programs, and, depending upon one's point of view, either provides individuals with a needed second chance or an inappropriate opportunity for a second criminal career.

The Juvenile Court System

There are approximately 2,800 juvenile courts in the United States.[68] Most of these courts are created and authorized by state statute, although they are usually municipal or county based. In most states juvenile courts have a complex tangle of relationships with state and local agencies. The juvenile courts' ability to function is usually dependent on fiscal and administrative resources provided by both state and local welfare and criminal justice agencies.[69] Customarily, juvenile courts' decisions are reviewable by the state's appellate courts.

Over the years the juvenile courts and their judges have been the subject of harsh criticism. Juvenile court judges are sometimes elected; sometimes serve in the position on a part-time basis; may not be lawyers; and may not, in rare cases, even have the benefit of a college education.[70] These factors, coupled with chronically and critically low funding, provoke charges of poor performance. One law review commentator observed that while "good will, compassion and similar virtues. . . are admirably present throughout the system. . . expertise, the keystone of the whole venture, is lacking."[71]

Prodded by these criticisms and the Supreme Court's extension of substantial due process rights to juvenile defendants, juvenile courts in recent years have become more formal and arguably more professional. Today, most juvenile courts are courts in every sense of the word, replete with full-time lawyers, jurists, public prosecutors, public defenders or legal aide attorneys, and private counsel.[72]

Although juvenile courts vary to some extent from state to state in philosophy, function and procedure, virtually every juvenile court divides its proceedings into three stages. First, the court holds a detention hearing to determine if the youth will be detailed in a juvenile institution pending the "trial." Second, the court holds the trial (sometimes called a jurisdictional hearing) in which the youth's conduct is established.[73] Third, juvenile courts hold dispositional or sentencing proceedings in which the youth may be ordered to return to his family, referred to a youth welfare or services agency, or, in rare cases, sent to a juvenile correctional institute.[74]

Legal and Social Records

Unlike law enforcement juvenile records, the records maintained by juvenile courts are, to some extent at least, regulated by state legislation. Virtually every state mandates that its juvenile courts create and maintain records about the children it processes, and most of those statutes describe the records in some detail.

Furthermore, most of these statutes distinguish between two types of juvenile court records; legal records and social records. Legal records usually consist of the following documents: the petition (which by law in many states must include the juvenile's name and age, the identity of the juvenile's parents, their address, and must describe the nature of the offense); a summons; a notice; any motions; the court's findings; any court orders; and the judgment.[75]

Legal records are created more or less automatically and the type of information which these records contain and their maintenance is usually not a matter of discretion for the juvenile court judge. One juvenile court judge described the process that impels the creation of legal records as follows:

> "The juvenile court, therefore, receives a great quantity of detail, the receipt of which it does not control.
>
> The public prosecutor files petitions in delinquency. These must allege the juvenile's name and age, identify parents and their address and state the precise nature of the offense. This becomes and remains a permanent court record unless and until sealed or expunged. A preliminary hearing will reveal further detail about the alleged offender and offense, preserved in a stenographic record. Motions to suppress evidence or for greater particularity further increase the record. An admission to the petition will develop yet more recorded detail about the child and the offense. A contested hearing whether to court or jury, will add to the record."[76]

Social records usually include information about the juvenile's family background; records of medical or mental health examinations; treatment information; and other types of personal information compiled by probation, treatment and rehabilitative personnel. The creation and maintenance of social record information is considered more controversial than the creation and maintenance of legal record information. Social record data is regarded as more sensitive and less germaine to the juvenile justice process than legal record information. Probably for these reasons, juvenile justice statutes generally accord social records the highest degree of confidentiality, frequently requiring court approval for access by anyone other than the juvenile or his representatives and court and rehabilitative personnel.

Customarily, juvenile court statutes do not define or in any way restrict the type or amount of personal information that can be collected or placed in social records. In consequence, critics have charged juvenile judges and rehabilitative agencies with an unthinking, unselective and ultimately counterproductive "lust" for the acquisition of extremely personal data about juveniles and their families.

> "...[T] here are no laws establishing any quality controls with regard to practices of collecting and using information. Thus, juvenile courts are not compelled to be introspective about their information-gathering practices. In other words, juvenile courts are never required to ask themselves (never mind prove) why, in a robbery case, for example, there is or is not a justification for expending resources to collect information regarding the child's performance in school or the degree to which his family is functional or dysfunctional. * * * The policy question on the level of information systems is to what extent should the juvenile courts be allowed to collect and store information, particularly information of a private nature, which has a relatively low predictive power. * * * There are no laws which presently recognize that a juvenile court's thirst for information should be

weighed against a juvenile's right and need for privacy."[77]

The courts have not taken nearly so negative a view as the commentators have of juvenile courts' appetite for information. In T.N.G. v. Superior Court of City and County of San Francisco, the Supreme Court of California--traditionally one of the nation's courts that is most sensitive to privacy concerns--rejected a request to purge juvenile records, and quoted with approval the trial court's rationale that, "these records should be made available to the probation officers and knowledgeable to the Court, so that if they came back that all of these matters can be considered in determining what is in the best interests of the minors."[78]

A few years later the Washington Supreme Court reached exactly the same conclusion for the same reasons.

> "Complete expunction of petitioners' arrest records, juvenile court files and what they have categorized as social and legal files, however, would be contrary to the underlying philosophy of our juvenile law.
>
> * * *
>
> In short, the judge facing one of the most difficult tasks in the judicial system needs all the help and information possible to reach a decision as to how to best correct and aid the juvenile before him."[79]

One of the few complaints made by a court about the juvenile court's collection of information was implied by the Supreme Court in In re Gault. There the Supreme Court noted that under the guise of paternalism and informality juvenile courts may extract information from juveniles which the juvenile would not offer in a more adversarial setting.[80] The Court implied, and others have said expressly, that if the juvenile courts collect sensitive data in this manner they have an obligation to insure its confidentiality. Otherwise, the juvenile court deceives its youthful wards into making disclosures which later come back to haunt them.

As one juvenile court judge put it:

> "...the juvenile court entraps the juvenile into a disclosure under the guise of non-criminality and confidentiality. If such is the case, then a fraud is thereby perpetrated on the juvenile who trusts the integrity of the Court."[81]

Segregation of Juvenile and Adult Records

Regardless of the content or character of juvenile court record information, virtually every state juvenile code today requires that such records be maintained separately from adult criminal record information. Provisions for separate maintenance of juvenile records are found in the juvenile codes of Illinois, Kansas, Maryland, Minnesota, Missouri, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Virginia and several other states.

In addition, many state adult criminal justice record laws provide expressly that juvenile records may not be included in adult systems. For example, Louisiana's law expressly states that, "nothing contained herein shall require or permit the collection and storage of individually identifiable criminal history or delinquency records of juveniles by the bureau unless a juvenile is tried and convicted as an adult..."[82] Provisions expressly excluding juvenile records from inclusion are found in the adult criminal history statutes of Kansas (K.S.A. §38-808(2)), Maryland (§27-743(3)(2)), Massachusetts (M.G.L.A. § 6-167), Nevada (Nev. Rev. Stat. §179A.070.2), Pennsylvania (Pa. Stat. Ann. §18-9105), Virginia (Va. Code Ann. §9-108.0.C) and Washington (Rev. Code Wash. §10.97.030(1)).

In many other states, the adult criminal justice record legislation clearly implies that juvenile records may not be included in adult criminal justice files. Most of these state laws authorize the collection and maintenance of records of "criminal offenses," "penal offenses," "crimes," or "criminals." Since most state juvenile codes provide that detention of a juvenile is not an arrest and that adjudication as a juvenile delinquent is not a criminal conviction, juvenile records are presumptively excluded from inclusion in systems which the state describes as adult criminal record systems.

Segregation requirements have a critical impact on the availability of juvenile record information. Today, law enforcement agencies and the courts rely upon automated criminal history record systems to obtain information about offenders for purposes of identification, investigation, charging and sentencing. If juvenile record information cannot be combined with adult data or maintained in the same system it may, as a practical matter, be unavailable to police and the courts--even if theoretically they are entitled to the data.

Depending upon one's point of view, these segregation requirements are either positive, because they give individuals a clean slate for a new start in life, or negative, because they give individuals a clean slate for a second criminal career. Regardless of one's point of view, restraints on the integration of an individual's juvenile and adult information frustrates first offender, career offender and other innovative sentencing programs and plays havoc with statistical and other research efforts.

To date, the juvenile justice system has lagged behind the adult system in developing their own automated record and index systems. Although there are many likely reasons for this phenomenon, probably the principal reason is the comparative absence of a priority for quick retrieval and exchange of juvenile justice history information.[83] However, as a result of continued improvements in the capabilities of information technology and its growing affordability, automated juvenile court and law enforcement systems are becoming increasingly common.[84] Recently, New Jersey adopted legislation which authorizes the creation of a registry of juvenile offenders for exchange of information among law enforcement agencies.

PART THREE

THE DISCLOSURE OF JUVENILE JUSTICE RECORDS

There are six chapters in this part of the report. All deal with the topic that is central to the report--the confidentiality of juvenile justice records. Each concerns the circumstances under which juvenile record data is available.

Chapter One deals with sealing and purging. If a juvenile record is purged it is destroyed and therefore unavailable to everyone. If a juvenile record is sealed then, at least in most jurisdictions, it is only available by court order, and then only if certain strict conditions are met.

Chapter Two covers disclosures to juvenile justice courts and agencies. Chapter Three covers disclosures to adult courts and to criminal justice agencies. Chapter Four covers disclosures to the juvenile justice subject. Chapter Five covers disclosures to researchers. Chapter Six deals with the most controversial issue, disclosures to governmental, non-criminal justice agencies, private employers, the media and other members of the public.

These chapters are organized according to the identity of the proposed recipient of the data, because the availability of juvenile justice data is influenced by this factor. In this regard the juvenile system differs substantially from the adult system. The disclosure of adult criminal history records to noncriminal justice agencies turns in most jurisdictions on whether there has been a disposition and the character of that disposition. Stated simply, adult conviction records are much more likely to be disseminated than adult arrest records. No doubt because juvenile dispositions are not supposed to indicate or connote criminal conduct, juvenile records, until recently at least, have been equally available, or more accurately unavailable, regardless of whether the juvenile arrest has resulted in a determination of delinquency[8]

At the federal level the Youth Corrections Act compels Federal District Courts handling juvenile matters to safeguard their juvenile records from disclosure, except in six circumstances.[86] At the state level, the disclosure of juvenile records is affected by the Criminal Justice Information Systems Regulations, originally published in 1976 by the Law Enforcement Assistance Administration (LEAA), and referred to throughout this report as the "Department of Justice Regulations". These Regulations apply to all state and local agencies which have in the past received funds from LEAA for collecting, storing or disseminating criminal history information. The Regulations prohibit dissemination of juvenile records to non-criminal justice agencies unless a federal or state statute, court order, rule or court decision specifically authorizes their dissemination.[87]

In addition, every state has adopted statutory provisions which deal with the disclosure and confidentiality of juvenile records. These provisions usually are included in separate juvenile or family court codes or titles, but a few juvenile record provisions are found in statutes governing adult criminal records or in statutes dealing with particular types of offenses, such as drug offenses.

Most state juvenile justice codes devote considerable detail to the confidentiality of juvenile records, and about half of the states have adopted confidentiality provisions that can be classified as comprehensive. The comprehensive statutes, naturally, cover a broad range of confidentiality issues, including the fingerprinting of juveniles; the availability and disposition of fingerprint files; public attendance at juvenile court proceedings; publication of information relating to juvenile proceedings; dissemination of juvenile court records (both legal records and social records); dissemination of police records relating to juveniles; and the sealing and purging of juvenile records. States and jurisdictions with statutes that may be classified as comprehensive include Alabama, California, the District of Columbia, Georgia, Indiana, Iowa, Kansas, Maryland, Mississippi, Montana, Nevada, New Jersey, North Dakota, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia and Washington.

Juvenile record information is widely available within the juvenile justice system. In theory, it is almost as available within the adult criminal justice system, but in practice, this is often not the case. Juvenile record information is surprisingly unavailable to record subjects in many jurisdictions; juvenile records are available with significant restrictions to researchers; and the basic rule continues to be--with exceptions--that juvenile data is unavailable to governmental, non-criminal justice agencies, private employers, the media and other members of the public unless specifically authorized bv federal or state law.

Chapter One

SEALING AND PURGING OF JUVENILE JUSTICE RECORDS

All of the chapters in this part of the report deal with the disclosure and confidentiality of juvenile justice record information; however, probably the most dispositive factor affecting such confidentiality is whether the juvenile data has been sealed or purged. A seal or purge order, with rare exception, will prohibit disclosure regardless of the identity or purpose of the proposed recipient. If the data has been purged it is destroyed and thus unavailable, regardless of the identity or purpose of the proposed recipient. If the data has been sealed it will continue to exist, but customarily cannot be disclosed outside of the agency holding the data, except pursuant to a court order.[86]

Under federal law a youth's juvenile delinquency record is automatically sealed if his conviction is "set aside." Under most state statutes a juvenile must petition a court for an order sealing or purging his record. Customarily, juveniles are eligible to petition for such an order after the elapse of a few years from the date of the delinquency adjudication, provided that a subsequent adjudication has not occurred. In most states a seal or purge order can cover both court and police records.

Besides discussing how sealing and purging limits disclosure, this chapter also describes the availability of a seal or purge order based on constitutional considerations or based upon the judiciary's inherent authority to redress governmental misconduct. Some courts have held that a seal or purge order will be granted, independent of statutory authority, whenever the juvenile detention, arrest or adjudication is unconstitutional, or whenever it is based on improper governmental conduct.

Federal Law

The Federal Youth Corrections Act has something of a hybrid sealing formulation in that it provides that all court records of a juvenile proceeding are automatically sealed "[Upon] the completion of any juvenile delinquency proceeding whether or not there is an adjudication."[89] However, unlike a "true" sealing statute, the Youth Corrections Act expressly authorizes disclosure of the "sealed" juvenile record in a variety of circumstances.

The courts have narrowed this formulation by holding that under the Youth Corrections Act a juvenile offender whose conviction is set aside is entitled to have his conviction record "completely" sealed. The Youth Corrections Act provides that a youthful offender who is discharged from confinement or probation prior to the maximum term of such confinement or probation is automatically entitled to a set aside of his conviction.[90] As interpreted by most courts this setting aside of the conviction requires a "true" sealing of the juvenile conviction record.

In Doe v. Webster, for example, the District of Columbia Circuit held that the set aside provisions implicitly authorize the sealing of the record of the set aside conviction. The Court said that once the set aside order is communicated to the FBI, then the FBI must:

> "physically remove [the record] from the central criminal files and place [A] in a separate storage facility not to be opened other than in the course of a bona fide criminal investigation by law enforcement authorities and where necessary for such investigation. These records may not be used by [the FBI] for any other purpose, nor may they be disseminated to anyone public or private, for any other purpose."[91]

Oddly, the District of Columbia Circuit in Doe v. Webster refused to order the sealing of the record of the arrest which led to the conviction. The Court said that the Youth Corrections Act does not provide implicit authorization for this step. Furthermore, the Court said that police agencies needed the arrest record for future investigations; and that arrest information is less likely to be disseminated and, if disseminated, is less stigmatizing.

In reality the arrest record, standing alone, may be more damaging to the juvenile than the arrest record accompanied by the ameliorating and explanatory record of the set aside conviction. With this point in mind, at least two courts have rejected the District of Columbia Circuit's approach and have held that a set aside conviction under the Youth Corrections Act implicitly authorizes the sealing of both the arrest and the conviction record.[92]

State Law

With a very few exceptions, all of the states have now added provisions to their juvenile codes for juvenile justice record sealing or purging, or both.[93] These statutes are surprisingly uniform in their approach. Most of the statutes contain standards for: (1) the time at which the records may be sealed or purged; (2) the conditions that must be met; (3) the records affected; (4) the effects of the seal or purge; and (5) the circumstances under which access to sealed records is permitted.

When Records May be Sealed or Purged

The approach of a majority of the states is to make the juvenile eligible to petition a juvenile court for an order to seal his record at a specified time and for an order to purge his record at a specified later time. Alabama's approach is typical. The Alabama juvenile code provides for sealing of juvenile records, upon petition by the subject or on the court's own motion, two years after discharge from custody or termination of court jurisdiction; and for purging five years after the subject reaches the age of majority. This approach is relatively common, and is followed by Colorado, the District of Columbia, Georgia, Idaho, New Jersey, North Dakota and numerous other states.

Arizona's statute provides for sealing at 18 (the age of majority) and purging 5 years later. Maryland's statute states that the juvenile court *may* order records sealed at any time and *shall* order them sealed upon the subject's petition, after reaching the age of majority. Texas' code provides that the court *may* seal any time, *shall* seal two years after jurisdiction ends (if stated conditions are met) and shall purge the records 7 years after the subject's 16th birthday (if stated conditions are met).

Arkansas' and Indiana's statutes simply say that the court may order records purged at any time on its own motion or the juvenile's petition.

California's statute authorizes sealing, upon petition, after the juvenile's 18th birthday or 5 years after court jurisdiction ends; and provides for purging 5 years after sealing, or automatically at age 38 unless the court orders otherwise for good cause shown. Louisiana's statute permits courts to purge juvenile records that have been inactive for 10 years. However, Louisiana excepts certain serious felony-type offenses from its purging provision. Montana provides for sealing at age 18 or termination of jurisdiction and purging 10 years later if the county attorney agrees.

A large number of states, including Connecticut, Michigan, Mississippi and North Dakota, have adopted statutes which authorize sealing or purging if the juvenile is adjudicated not delinquent or the petition is dismissed.

Delaware's and New Jersey's statutes authorize purging to occur earlier than the normal time if the juvenile intends to enlist in the military.

Importantly, most of the state statutory sealing and purging provisions require the juvenile to petition the court in order to obtain the seal or purge order. Requiring juvenile offenders to return to court to obtain a seal and purge order poses a substantial burden for most juvenile offenders. Undoubtedly, many juvenile offenders will not have the understanding, initiative or resources to surmount such a hurdle. Alaska's statute is an exception in that it requires "automatic" purging. In Alaska a court *must* order the purge of a juvenile record within 30 days of the juvenile's 18th birthday or 30 days from the date that the court relinquishes jurisdiction, whichever occurs last.

The President's Commission on Law Enforcement and the Administration of Justice's Task Force Report on Juvenile Justice described the difficulty which juvenile offenders have in seeking a court seal or purge order.

> "Expunging records is not the simple operation it may seem. In California it requires initiative from the party concerned and usually the assistance of an attorney; the procedure necessitates a hearing, and it may be complicated or im-possible if a person has been a juvenile ward in more than one county."[4]

Conditions for Court Action

Again, the approach taken in Alabama's statute is typical: in order for records to be sealed or purged, the court must establish at a hearing that the record subject has not been subsequently adjudicated delinquent or convicted of a felony or a misdemeanor involving moral turpitude and no juvenile or criminal proceedings may be pending. These standards are found in juvenile sealing and purging provisions throughout the country. In addition, many jurisdictions (including Colorado, the District of Columbia, Georgia, Idaho, Texas and Vermont) also require that the court find that the juvenile has been "rehabilitated."

However, some states (including Arkansas, Indiana and Maryland) take the opposite tack in that they do not set out standards, but instead leave the matter to the discretion of the juvenile court. Ohio, as noted in a previous section, conditions purging upon the subject's waiver in writing of his right to bring a civil action against the authorities for his arrest.

Finally, several state statutes (including those in Alabama, the District of Columbia, New Jersey, New Mexico and Washington) provide that the juvenile record can be "unsealed" if the subject is subsequently adjudicated delinquent or convicted of a crime. This unsealing permits the court to take the sealed record information into account in setting the sentence.

Records Affected

Many of the statutes which provide for sealing or purging of juvenile court records also cover law enforcement agency records. Specific reference to sealing or purging of law enforcement records is found in the juvenile codes in Alabama, Alaska, Arizona, California, the District of Columbia, Indiana, Iowa, Idaho, Montana, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, South Dakota, Texas, Utah and Virginia. These statutes usually provide either that law enforcement records are automatically included in sealing or purging orders or may be included if the petition so requests and/or the court so orders. Usually the court is required to give notice to appropriate law enforcement agencies and order them to seal or purge their records about the juvenile. In a few states, including Indiana, Iowa and Oklahoma, the juvenile code explicitly states that juvenile courts can order law enforcement agencies to send the juvenile records to the court to be destroyed or returned to the subject.

Missouri's statute provides that all juvenile court records shall be purged except the "official court file" (legal records) and that the court may seal the official court file and all police records if deemed in the best interest of the juvenile. Idaho's statute states that when records are purged a special index shall be kept, available only by court order.

Effect of Seal and Purge Orders

Most of the juvenile codes contain a provision very similar to that set out in the Alabama statute:

> "Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted and the court and law enforcement officers and departments shall reply and the person may reply to any inquiry that no record exists with respect to such person."

In addition, Massachusetts' statute provides expressly that sealed records may not disqualify the juvenile from future public employment or service and that the juvenile shall answer "no record" to public inquiries and answer "sealed delinquency record over 3 years old" to police inquiries. Texas' statute expressly states that nothing concerning sealed juvenile proceedings may ever be used against the juvenile in a civil or criminal case.

Access to Sealed Records

All of the juvenile statutes severely limit access to sealed records. A number of jurisdictions (including Alabama, California, the District of Columbia, Kansas, Kentucky, Utah, Vermont and Washington) provide that access may be permitted only by court order upon petition of the juvenile and only to persons named in the petition. Maryland and West Virginia provide for access only by court order upon "good cause shown." However, a sizeable number of state statutes (including those in Alaska, Massachusetts, Nevada, South Dakota and Utah) expressly provide that sealed records may be used for sentencing purposes if the record subject subsequently is convicted of a crime.

A number of state statutes also expressly permit other miscellaneous uses of sealed juvenile justice records. Washington's statute, for example, states that sealed records may be made available to the victim of the juvenile offense. Iowa provides that sealed records can be available by court order for research purposes. Montana law provides that sealed records can be made available by court order to certain law enforcement officials and to persons with a legitimate interest in the case or in the work of the court. New Jersey permits sealed records to be accessed, pursuant to court order, for use in determining prior offender status.

Constitutional and Inherent Authority for Sealing and Purging

Only a relative handful of reported decisions deal with the issue of sealing or purging of juvenile records in the absence of statutory authority. This comparative lack of case law probably reflects the availability and adequacy of statutory sealing and purging remedies for juvenile offenders.

However, where juvenile offenders have sought to obtain a court order to seal or purge their juvenile justice record without the benefit of statutory authorization, some courts have provided a remedy. In these instances, the court's decisions to seal or, more often, purge the juvenile justice record rest on one of two grounds.

Some courts have said that where the juvenile arrest or detention was unconstitutional or some other improper government action led to the creation of the juvenile record, the court will exercise its inherent authority to right governmental wrongs and will order the sealing or purging of the record. For example, a New York Family Court ordered the purging of both court and police agency records of a juvenile detention after the juvenile delinquency petition had been withdrawn for lack of evidence.[95] The Court based the purge order on its inherent power over its own records and its ancillary power to reach juvenile records held by police agencies.[96]

> "And relief in the instant case is dictated by the principle that a court must exercise its power over its records when necessary to prevent injustice and unwarranted injury--that a court will not allow itself to be made the instrument of a wrong."[97]

In Doe v. Webster, the District of Columbia Circuit refused to exercise its inherent authority to purge a juvenile's arrest record because the juvenile failed to demonstrate that the record described an arrest that was illegal or improper. However, the court acknowledged that in the right case courts have inherent authority to provide such relief.

> "[A]lthough there are indeed many instances in which courts have ordered expungement of arrest records in the exercise of their inherent equitable powers, all of these cases involved either a lack of probable cause coupled with special circumstances, flagrant violations of the Constitution, or other unusual and extraordinary circumstances.[98]

The other basis on which courts rest sealing or purging orders in the absence of statutory authorization is to find that the continued maintenance of the record, in and of itself, represents a violation of the subject's constitutional right of privacy or another of his constitutional rights. Up until 1976, many courts ordered the purging of adult criminal history records (almost always arrest records without a disposition) on precisely this theory.[99] However, the Supreme Court's 1976 decision in Paul v. Davis,[100] holding that police disclosure of adult arrest records does not violate any constitutional privacy right, casts doubt on whether a seal or purge order can be based on the notion that the continued existence or, at least, the continued use of a juvenile record violates the juvenile's constitutional right of privacy. Lower court decisions since Paul v. Davis, confirm that this theory is highly suspect.[101]

Although few decisions regarding the constitutional basis for purging juvenile records have been published since Paul v. Davis, juvenile justice records are generally considered to be far more sensitive and confidential than adult criminal history records. Therefore, the constitutional basis for sealing or purging juvenile records may continue to have vitality, despite the Supreme Court's decision in Paul v. Davis.

Finally, a few courts have denied requests for a seal or purge order where no statutory right of sealing or purging was involved, not because they questioned the authority of courts to provide such relief, but rather because the courts concluded that the juvenile justice system's interest in the continued availability of the records outweighed the juvenile's interest in their destruction.[102] These courts said that this conclusion was especially justifiable in view of the juvenile courts' need for data in order to "treat" the juvenile and the fact that confidentiality safeguards already offer juveniles adequate protection.

Chapter Two

SHARING OF JUVENILE JUSTICE RECORDS WITHIN THE JUVENILE JUSTICE SYSTEM

This chapter describes the availability of juvenile justice records within the juvenile justice system and concludes that, as a rule, juvenile courts are entitled to obtain any unsealed juvenile records for any purpose. In some states juvenile courts are also entitled to obtain sealed juvenile records for sentencing purposes. The primary limitation upon a juvenile court's handling of juvenile records, apart from sealing and purging, involves the use of a prior record in the adjudicative stage. A court which reviews the juvenile's prior record at this stage may be accused of prejudgment.

The availability of juvenile justice records to rehabilitative and other child welfare agencies is also described. Such agencies have broad access to juvenile record data, although their access is not as broad as the juvenile court's. Depending upon the state, the rehabilitative agency may not be able to obtain all of the legal records or may not be able to obtain law enforcement records about the juvenile. Since social record data is thought to bear directly on the child's rehabilitation, and in fact, is usually compiled by a child welfare agency, it is broadly available to such agencies.

Juvenile Courts

The Federal Youth Corrections Act authorizes courts handling juvenile records to release these records upon receiving inquiries from any other court of law, including, presumably, juvenile courts.[103] However, somewhat surprisingly, most state statutes do not expressly authorize the use of juvenile court records in subsequent juvenile court proceedings. Express authority is found in only a few state statutes, including those in Hawaii, Iowa, Massachusetts, Mississippi, Oregon, Tennessee and West Virginia. Similarly, most state juvenile codes do not expressly authorize juvenile courts to obtain or use juvenile records held by police agencies. Only a few states statutes, including those in Alabama and Hawaii, expressly provide for juvenile court access to juvenile law enforcement records. While few juvenile codes expressly authorize juvenile courts to obtain juvenile justice records, at the same time no state statutes prohibit such access or prohibit agencies handling juvenile records from sharing such records with juvenile courts.

The absence of express authority probably reflects a view that such authority is implicit in the juvenile court's charter. Access to juvenile justice records can also be presumed from the juvenile court's mission. If a juvenile court is to prescribe effective treatment and rehabilitation for a juvenile, it must have before it as much relevant information as possible, including a record of the juvenile's prior offenses.

Where necessary, juvenile courts can obtain a juvenile's prior court or law enforcement record by issuing an order for its release. Juvenile codes in almost every state give juvenile courts authority to order disclosure of juvenile records to parties with a "legitimate interest" in the record. Juvenile courts should be considered to have a legitimate interest in the record. Furthermore, there is no credible countervailing policy argument against juvenile court access because, as noted, such access serves the basic purposes of the juvenile justice system and conversely, does not undermine any of its goals or philosophies.

Thus, even in the absence of express authority, it seems a near certainty that both juvenile court and law enforcement records, provided that they have not been sealed or purged, are legally available to juvenile courts for use in subsequent proceedings involving the juvenile. This conclusion is further borne out by the fact that, in almost every state, juvenile rehabilitative agencies are expressly authorized by statute to obtain juvenile court and law enforcement records. It would be anomalous if rehabilitative agencies to which the juvenile court assigns the juvenile (sometimes including private organizations under contract with juvenile justice agencies) could obtain records about the juvenile that are unavailable to the juvenile court.

The better question is whether there are any restrictions upon a juvenile court's use of juvenile justice record information. Court opinions indicate that juvenile courts can, and should, use juvenile justice records to aid in the disposition or sentencing of the juvenile.[104] Since juvenile courts try to achieve individualized sentencing it makes great sense for the court to know as much as possible about the juvenile. Indeed, as noted in the prior chapter, many state codes make even sealed juvenile records available to both juvenile and adult courts for use in the sentencing phase of their proceeding.[105]

But what of the use of juvenile records in the adjudicative phase? The Supreme Court has said that juvenile adjudications must be conducted according to the rules of basic fairness. Is it fair for a juvenile court judge to have a record of a juvenile's past offenses before him when he tries to decide whether the juvenile committed the specific act of which he is accused? At least a couple of courts have answered this question in the negative, holding that a juvenile court's review of a juvenile's prior record during the adjudicative phase is reversible error.[106]

In McKeiver v. Pennsylvania, the Supreme Court took note of this issue. The Court held that a jury trial is not constitutionally mandated in a juvenile trial. However, Justice Blackman, writing for the majority, worried that without a jury trial the chance for prejudgment is increased because juvenile court judges may be aware of the juvenile's prior record.[107] Moreover, Justice Douglas' dissent, with which Justices Black and Marshall concurred, complained of the danger of prejudgment in juvenile cases because the judge may review the juvenile's prior social and legal records.[108] Although the extent to which juvenile judges review a juvenile's prior record before deciding a juvenile's guilt varies, no doubt, depending upon the state and the court, there are reports that in some jurisdictions this is a relatively common practice.[109]

The prudent view is that juvenile courts should not look at prior records before the sentencing phase; however, as a practical matter, juvenile court judges in most jurisdictions are free to consult a juvenile's prior record at any stage in the proceeding, with the caveat that if the juvenile can show that the court's use of his juvenile record resulted in bias or unfairness, or that the juvenile court failed to establish his guilt beyond a reasonable doubt, the juvenile will be able to overturn the adjudication of delinquency.

Juvenile Rehabilitative and Welfare Agencies

Although almost every state gives juvenile correctional agencies, probation agencies and other rehabilitative agencies access to juvenile justice records, some states require that the agency first obtain an order from the juvenile court authorizing their access. State codes may distinguish between social records and legal records in regard to access by rehabilitative agencies. State codes may also distinguish between juvenile court records and police juvenile records. Rehabilitative agencies are usually assured of access to juvenile court records as a matter of right, whereas their access to police records is a matter of court or police discretion.

Virginia's statute is typical. It provides that social records about juveniles committed to the state Board of Corrections may be made available to "any public agency, child welfare agency, private organization, facility or person who is treating the child pursuant to a contract with the Department." Such records also may be made available by court order to "any other agency, person or institution having a legitimate interest in the case or in the work of the court." Law enforcement records about juveniles may be made available to "public and nongovernmental institutions or agencies to which the child is currently committed" as well as to persons with a legitimate interest in the case or in law enforcement work.

The District of Columbia's statute makes juvenile court records (legal and social records) available to "public or private agencies or institutions providing supervision or treatment or having custody of the child." Law enforcement records may be made available to "the officers of public and private institutions or agencies to which the child is currently committed and those professional persons or agencies responsible for his supervision after release."

New York's statute provides that, "any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record to be had and may in the discretion of the court obtain a copy."

Idaho's statute states that juvenile court records may be open to inspection to, "any institution or agency to which custody of a child has been transferred" or by "persons, institutions or agencies having a legitimate interest in the protection, welfare or treatment of the child."

Alabama's juvenile code states that social and legal records of the juvenile court shall be open to "representatives of a public or private agency or department providing supervision or having legal custody of the child." Law enforcement records may be made available to "public and non-governmental institutions or agencies to which the child is committed."

Chapter Three

SHARING OF JUVENILE JUSTICE RECORDS WITHIN THE ADULT JUSTICE SYSTEM

The availability of juvenile data within the adult justice system is discussed in this chapter. By law, juvenile justice data is almost as available within the adult justice system as it is within the juvenile justice system. Thus, it is ironic that, in practice, adult justice agencies do have less access to juvenile data than do juvenile agencies. This occurs, not because laws or policies mandate confidentiality, but because the legal and administrative rules that govern the organization of recordkeeping systems--such as rules for segregation of adult and juvenile records, or rules restricting the creation or use of juvenile fingerprints--make it difficult, as a practical matter, for adult agencies to obtain juvenile data.

The first section of this chapter discusses access to juvenile data by adult courts for criminal prosecutions. Adult courts are precluded (with exceptions) from using juvenile data in the adjudicative phase, but this data is theoretically available in the sentencing phase. In this respect adult court access is very similar to juvenile court access.

The second section of this chapter discusses the availability of juvenile data in civil suits. Juvenile data is seldom available in civil suits, with the exception of instances in which the juvenile offender or his victim bring a suit involving the very event which gave rise to the juvenile record.

The third section deals with disclosure of juvenile records to law enforcement agencies. Juvenile law enforcement records are available to law enforcement agencies and, to a lesser extent, so too are juvenile court records. The primary obstacle to law enforcement agency access is not statutory confidentiality policies but statutory and other policies that govern the organization of adult and juvenile record systems. Thus law enforcement agencies often do not obtain juvenile justice records, even though they are legally authorized to obtain this data.

Disclosure in Criminal Prosecutions

In theory, juvenile data ought to be less available in adult criminal proceedings than it is in juvenile proceedings. After all, when juvenile data is available in juvenile proceedings no threat is posed to the concept of confidentiality because juvenile courts and welfare agencies will presumably use this data to assist in the juvenile's rehabilitation--and a primary purpose of confidentiality is to assist in rehabilitation. However, disclosure of juvenile record information in adult criminal prosecutions presents a different issue. Such disclosure raises a possibility of juvenile record information being used to punish, not rehabilitate.

However, the issue is seldom analyzed in this way. As a theoretical matter juvenile data is as available to adult courts as it is to juvenile courts. Access to such data is restricted at the adjudicative phase (with exceptions) and is available at the sentencing phase. However, as a practical matter juvenile data is probably much more likely to be made available to juvenile courts than to adult courts, due to administrative factors such as the segregation of adult and juvenile data, the absence of juvenile fingerprints and the separation of the juvenile and adult court processes.

A 1981 survey of access by prosecutors to juvenile data for use in adult criminal prosecutions reached exactly this point.

> "Although most states have laws that permit the sharing of information in particular instances, the practicality of the matter appears to be the critical issue. Since the juvenile and adult court systems are totally separate institutions-- with separate personnel, policies and

recordkeeping systems--information sharing is not a routine matter."[110]

Federal Law

The Federal Youth Corrections Act, as noted earlier, permits disclosure of juvenile records in response to inquiries from "another court."[111] However, in the only court opinion published to date interpreting this provision, United States v. Chacon, the Ninth Circuit Court of Appeals narrowly interpreted this broad language. It said that before admitting a juvenile record, a court should weigh the need for the juvenile record against the Youth Corrections Act's goal of preventing undue public disclosure of a juvenile offender's identity.

In Chacon, an adult defendant tried to introduce the juvenile record of the individual with whom the defendant was arrested. The Court held that the trial judge should review the accomplice's juvenile record in camera and make any relevant material available to the defendant. The Court suggested that a juvenile record should not be admissible in an adult proceeding unless the defendant's constitutional rights are at stake or the defendant is attempting to introduce his own juvenile record.

> "To permit release of juvenile records to any court for any purpose would substantially weaken the protection intended by Congress in enacting §5038."[112]

State Law

State law, although perhaps a little more restrictive, is generally similar to federal law. Customarily, state juvenile codes prohibit the use of a juvenile court record in the adjudicative stage of an adult criminal prosecution but not in the sentencing stage.[113]

The Sentencing Phase

Most state codes either expressly provide, or have been interpreted by the courts to provide, that a juvenile justice record can be used for sentencing or related decisions, such as bail. The majority of the state codes expressly permit the use of both legal and social juvenile court records for criminal sentencing purposes after conviction.[114] A smaller number of state codes also expressly authorize criminal courts to use police records concerning juveniles for sentencing purposes.[115]

Even in states where no such express statutory authority exists, court decisions consistently have held that juvenile court and police records may be used for adult sentencing purposes.[116] Traditionally, adult courts have enjoyed broad discretion to take into account a variety of information about the offender at the sentencing phase.[117] The courts have ruled in favor of the use of juvenile records in adult sentencing proceedings even when the state's juvenile confidentiality statute expressly prohibits the use of juvenile court records as evidence for any purpose in subsequent proceedings in other courts. The courts have reasoned that use of records for sentencing after conviction does not constitute use as evidence or as part of the formal court proceeding.

In Commonwealth v. Myers,[118] for example, the Supreme Court of Pennsylvania ruled on whether the following provision in the Pennsylvania Juvenile Code barred the use of a juvenile record in an adult sentencing proceeding: "The disposition of a child or any evidence given in a juvenile court shall not be admissible as evidence against the child in any other court."[119] The Court held that it did not, on the grounds that a judge imposing sentence must have the most complete data possible about the defendant in order to make a just and fair decision.

> "A judge whose duty it is to determine the proper sentence imposed on those convicted of crime cannot be expected to limit himself to

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> only that which appears in the record of the trial of the prisoner.[120]

* * *

> "A sentencing judge and others dealing with the sentence, cannot with justice to the boy or the public ignore completely the boy's conduct during the time he was within the age of juvenile court law."[121]

At least one court has also held that it makes no difference whether the juvenile justice record is a juvenile court disposition or merely a police detention and referral. Any relevant information can be used at sentencing that bears on the defendant's behavior or character.[122]

The only exception to the rule that a juvenile record can be used in an adult sentencing proceeding involves the use of a juvenile record generated in a case in which the juvenile did not have the benefit of counsel or some other constitutional right mandated by Gault and its progeny. In those instances the courts have almost always held that the juvenile record cannot be used in the adult sentencing process.[123]

Many of the state codes which authorize the use of juvenile records for sentencing purposes also expressly authorize the use of these records for parole, probation, correctional and similar dispositional purposes associated with the criminal conviction. Provisions of this kind are included in the statutes in Alabama, Georgia, Illinois, Indiana, Kansas, Pennsylvania, Tennessee and Vermont. Here too, even where no express authority of this kind is given, courts have interpreted the juvenile codes to permit such uses.[124]

Perhaps the most common type of "dispositional" use for which juvenile records are available is bail decisions. The District of Columbia's Juvenile Code, for example, expressly authorizes the use of juvenile court records for bail determinations. But even in states where the juvenile code is silent about bail determinations, some courts permit the use of juvenile records for bail purposes. In Brunetti v. Scotti, for example, a New York state court said that a bail determination, like a sentencing determination, requires the court to "take into account" the defendant's "character, reputation, habits and mental condition."[125] This kind of decision requires the court to make its determination on the basis of all available information, including juvenile records.

The Adjudicative Phase

In general, a defendant's juvenile record cannot be introduced in court or disclosed to the judge or jury prior to their determination of his guilt. However, the courts have said that juvenile records of witnesses and others can be used in criminal adjudications if the information is necessary in order to safeguard the defendant's right to due process and a fair trial under the Fifth and Sixth Amendments.[126] As noted earlier, the Supreme Court reached exactly that decision in Davis v. Alaska, holding that the defendant had a right to cross-examine a key prosecution witness about the witness' adjudication of juvenile delinquency.[127]

Apart from cases where a prosecution witness is involved, courts are much more reluctant to permit the introduction of a witness' juvenile record for impeachment purposes. In fact, the general rule continues to be that a defense witness' juvenile record cannot be introduced to impeach him--although some courts have disagreed.[128] Where the defendant himself is the witness, the courts generally hold that the defendant's prior juvenile record cannot be introduced to impeach him.[129] To hold otherwise, of course, would make a nullity of state stautes which expressly forbid the use of juvenile records against juveniles in subsequent adult proceedings. However, there is respectable case law authority for the proposition that the juvenile record of a criminal defendant is admissible to impeach the defendant where he has testified as to his good character and past conduct.[130]

In summary, it appears that adult courts, at least in theory, have adequate access to juvenile justice records for criminal sentencing and dispositional purposes. The unavailability of the juvenile record at the adjudicative stage in an adult proceeding has caused little complaint since the court and the jury are seldom aware of a defendant's prior adult criminal record at this point.

However, the real problem for the adult courts caused by confidentiality strictures is at the arraignment or charging phase in criminal proceedings. In recent years state legislatures have established selective charging and sentencing regimens for certain types of first offenders, as well as certain types of multiple offenders. In some states it is not always clear whether a prior juvenile adjudication affects entitlement for such programs. In any event, if a prior juvenile record is unavailable to prosecutors (and in some states this is more likely than others) it makes it extremely difficult to effectively implement first offender and multiple offender programs. Criminologists note that as a practical matter, far too many chronic and serious juvenile offenders enter the adult criminal justice system masquerading as first offenders.[131]

Disclosure in Civil Suits

In general, juvenile records are much less apt to be available for use in civil suits than in criminal actions. For one thing civil actions do not involve a sentencing phase where, by tradition and logic, the use of juvenile record information is thought to be proper. Furthermore, civil actions are less likely to raise ticklish constitutional questions about the necessity for the use of a juvenile record to assure a fair trial. Accordingly, with only minor exceptions, the courts have held that a juvenile record is not admissible in a civil proceeding to impeach a witness' testimony.[132]

The Federal Youth Corrections Act and juvenile codes in a few states do contain language which suggests that a juvenile record may be used in a civil proceeding if the court determines that there is a legitimate interest in such use and this interest outweighs the juvenile's and the state's confidentiality interest. The juvenile codes in Delaware and Wyoming, for example, authorize the use of juvenile records by "other courts," which presumably can include civil courts. However, as previously discussed, the courts are likely to interpret this language quite narrowly.[133]

Perhaps the only civil situation in which a juvenile record is likely to be admissible occurs when the action involves the very incident which gave rise to the juvenile record. For instance, where the juvenile sues based on the event which led to the creation of the juvenile record in the first place, the defendant may be able to introduce the juvenile record.[134] Similarly, where the victim of the incident which led to the creation of the juvenile record brings an action against the juvenile offender, a few courts and the juvenile codes in a few states authorize the victim to obtain and use the juvenile record.[135]

Ohio has adopted a somewhat unusual provision concerning juvenile records and civil actions. If a juvenile is adjudicated not delinquent, or if charges against him are dismissed, he may apply for expungement of all records. However, he must first waive his right to bring a civil action based on the juvenile arrest. If he does not submit a written waiver, the juvenile court must seal the records until the statute of limitations on the civil action expires, or until the civil action is terminated. Then the records may be ordered expunged.

Disclosure to Law Enforcement Agencies

In general, law enforcement agencies, primarily police agencies, have broad and largely unrestricted access to juvenile justice record information. At the federal level the Youth Corrections Act expressly provides that juvenile court records may be obtained by "law enforcement agencies where the request for information is related to the investigation of a crime or a position within the agency."[136]

State Statutory Provisions

Only about a dozen of the states have adopted statutory provisions expressly authorizing access by law enforcement officials to juvenile court records.[137] However, some of these states place certain limits on police access or use. About the same number of states, but not the same states in every case, have adopted statutory provisions which authorize the sharing of law enforcement agency records about juveniles with other law enforcement agencies.[138] Some of these statutes limit the particular uses to which the records may be put. Absent such a limit, it appears that the records can be used for all purposes related to law enforcement, including police investigations and charging and prosecution decisions.

As an example, the District of Columbia's statute places strict rules on the circumstances under which court records are available, but has no restrictions on the availability to criminal justice agencies of law enforcement juvenile records. The statute provides that legal records of the juvenile court may be made available to law enforcement officials of the District of Columbia only to investigate a criminal case growing out of the same transaction or occurrence that gave rise to the juvenile proceeding. Social records are available only by court order. However, law enforcement agency records about juveniles may be made available to law enforcement officials of the District of Columbia, the United States or other jurisdictions, "when necessary for the discharge of their official duties."

California's statute provides that any unsealed information gathered by a law enforcement agency relating to a juvenile may be disclosed to another law enforcement agency which has a "legitimate need for the information for purposes of official disposition of a case." When the disposition of the juvenile court proceeding is available, it must be included with any information released.

Louisiana's statute states that juvenile court records may be released to a peace officer, probation officer or district attorney "in connection with the performance of his duties." The statute also provides that for good cause the court may order disclosure of juvenile court records and law enforcement agency records relating to juveniles "to any person, agency, institution or other court upon a particular showing that the information is relevant to a specific investigation or proceeding."

Maryland's statute provides that police records about juveniles may be made available for "confidential use" in the "investigation and prosecution of the child by any law enforcement agency." Juvenile court records, however, may not be released for law enforcement purposes without a court order, "upon good cause shown."

Mississippi law enforcement agency records about juveniles may be released to any public law enforcement agency, but the agency releasing the record must report the release and location of the records to the juvenile court. Law enforcement agencies receiving the records may use them only for "criminal law enforcement and juvenile law enforcement."

New Jersey law permits records of juveniles, including social, legal and law enforcement records, to be made available to prosecutors and law enforcement agencies if necessary "for the investigation of particular acts of delinquency or crime" or if necessary to locate, apprehend or protect the juvenile.

Pennsylvania permits law enforcement records about juveniles to be made available to "law enforcement officers of other jurisdictions when necessary for the discharge of their official duties." The Tennessee statute has an identical provision, and similar provisions are found in other state codes. Presumably, disclosure to Pennsylvania and Tennessee law enforcement officers is also permitted, although the statutes do not say so expressly.

Vermont's statute provides that law enforcement records about juveniles may be made available to prosecutors and other law enforcement officials "in connection with record checks and other legal purposes."

Virginia's statute is quite detailed on the subject of the use of juvenile law enforcement agency records for law enforcement purposes. Such records are required to be kept separate from adult files, and law enforcement agencies are required to take special precautions to protect such records from unauthorized disclosure. Disclosure is permitted by court order to law enforcement officers of other jurisdictions for the discharge of their "current official duties." In addition, without court order, law enforcement officials may exchange "current information on juvenile arrests" with other Virginia law enforcement officials as well as those of other states and the federal government. This information must be limited to name, address, physical description, date of arrest and charge. Furthermore, the data may be used only for current investigations and may not be used to create new files or records by the recipient agencies.

Wisconsin's statute permits the "confidential exchange" of police records about juveniles with other law enforcement agencies.

Miscellaneous Factors Which Foster Law Enforcement Access

Even in states which have not adopted statutes which expressly authorize the disclosure of juvenile court or law enforcement records to police agencies, there is good reason to believe that these records are usually available to the police.

First, the law in many states, and at the federal level, is silent about the disclosure of law enforcement juvenile justice records to law enforcement agencies. Furthermore, the Justice Department's Regulations, which set standards for the handling of criminal history record data by state and local criminal justice agencies, place restrictions on the disclosure of juvenile records to non-criminal justice agencies. However, these Regulations place no restrictions on disclosures to criminal justice agencies.[139]

Second, the case law indicates that the courts are sympathetic to the sharing of juvenile record information among law enforcement agencies. In Brunetti v. Scotti, for example, a New York State Supreme Court panel

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noted that New York's juvenile code prevents public access to juvenile records held by police agencies, but the Court concluded, "nothing in that section prohibits the use of such records within the criminal justice system."[140]

Third, juvenile codes in virtually every state permit juvenile court records to be made available by court order to persons with a "legitimate interest" in them. Law enforcement users should qualify under this standard.

Fourth, as examined in detail in a subsequent chapter, many state codes provide that certain types of juvenile court records, or juvenile records relating to particular offenses, are public records. These records, of course, would be available for unrestricted law enforcement use.

In summary, despite the fact that statutes in only about a dozen states expressly state that law enforcement agencies are authorized access to juvenile records, the likelihood is that the information is often available, until sealed, for use by the police agencies, prosecutors and others in the criminal justice system for specific investigative and prosecutorial purposes. This is especially true of the arrest records that police agencies maintain about juveniles, and these are the records that are most often sought by law enforcement agencies. Social records created by juvenile courts and rehabilitative agencies, and to a lesser extent legal records, are less likely to be available, but are probably not as necessary for most law enforcement purposes.

Access to Juvenile Data by Criminal Record Repositories

This is not to say though that law enforcement agencies are as able to obtain juvenile data as they would like. Perhaps the most significant problem is posed by statutes which prohibit state criminal justice record repositories from obtaining juvenile histories or at least prohibit them from combining the juvenile and adult data. Today, criminal justice agencies, usually the state department of justice or state department of public safety, have the responsibility to compile, maintain and disseminate, as appropriate, complete histories of every individual's in-state criminal activities.

However, even though law enforcement agencies may be able to get juvenile justice data in connection with a specific investigation, repositories in most states are not able to obtain juvenile justice data in order to compile a complete history of an individual's delinquent and criminal behavior. Many codes are not worded broadly enough to authorize courts or law enforcement agencies to share juvenile justice data with the state repository. Indeed in some states, such as Virginia, the juvenile code expressly prohibits the recipient agency from using the juvenile data to create a new record. And in a great many states, juvenile statutes explicitly prohibit the co-mingling of adult and juvenile records.[141]

Meanwhile, the number of law enforcement agencies and courts which are abandoning or curtailing their own record systems in favor of reliance upon central state repositories is growing. Even agencies with their own record systems are increasingly apt to rely primarily upon the repositories because, thanks to automation, its response is likely to be quick, inexpensive and relatively complete. The result of all this is predictable but extremely important. If the state repository does not have the juvenile data, then investigators, prosecutors and adult courts will not often obtain this data.

Thus, the primary effect of existing restrictions upon a repository's handling of juvenile data may be to foster the continued existence of two parallel but largely distinct record systems--one for juvenile offenses and one for adult offenses. The result of this two-track system, as discussed earlier, may be to handicap the apprehension and prosecution of juvenile offenders. The result may also be to handicap policymakers who are deprived of fully accurate or complete statistical information about juvenile crime and recidivism and about the performance of juvenile and criminal justice agencies.

A New York Times analysis of juvenile justice secrecy concluded that the, "veil of secrecy means that policymakers--in the Legislature, in City Hall, in the school, in the prosecutors' offices, in the Police Department, in the courts and institutions for juveniles--usually find themselves without the information needed to shape policy on juvenile crime."[142]

Chapter Four

SUBJECT ACCESS TO JUVENILE JUSTICE RECORDS

In this chapter, a juvenile's right to obtain records maintained about him by the police and the courts is discussed. Statutes in a few states give juveniles a right of access to their police records, and statutes in several states give juveniles a right of access to their court records. This differs considerably from the state of the law concerning subject access to adult criminal history records. The Department of Justice Regulations and state statutes give adults a right to see their criminal history records in virtually every jurisdiction.

In those states that do not provide for a statutory right of access, courts are inclined to order access only when the juvenile can show that the information in question was used to make a decision about the juvenile. For this reason, juvenile justice data which is relevant to a juvenile's defense is usually made available to the juvenile and his attorney, either by statute or court order.

The question of access by a juvenile or his attorneys, parents or guardians to his juvenile justice records comes up in three contexts: (1) access to records held by police agencies; (2) access to historical juvenile court records; and (3) access to contemporaneous juvenile court records in order to assist the juvenile in his defense.

Juvenile Records Held by Police Agencies

Just as there is comparatively little law governing the handling of juvenile records by police, there is similarly little law governing access by the juvenile subject to such records. A few state statutes expressly give juveniles a right of access to their police records. But more often juveniles do not enjoy a statutory right of access to their police records. Although there is no case law

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directly on point, it is likely that if the juvenile could show that this information was used as a basis for significant adverse decision about him, the courts would find that he has a right of access to the data on due process grounds.[143]

Juvenile Court Records

Many state juvenile codes do authorize access by the juvenile subject to his juvenile court records, including social records. In most cases, such access is granted to the subject and, while he is a juvenile or under custody, to his parents, guardian and attorney.[144] Most state laws also permit the subject to have access to his sealed records, and many permit the subject to petition the court to send his records to other persons or agencies.

Surprisingly, only two states, Indiana and Washington, have adopted statutory provisions which expressly permit access to juvenile court records for the purpose of challenge and correction of juvenile justice records. By contrast, challenge and correction rights are routinely available to adults in respect to their criminal history records.

The Indiana statute provides that "a person on whom records are maintained may request the court to modify any information that he believes is incorrect or misleading." The Washington state statute states that juvenile justice agencies have a duty to maintain accurate records; shall not knowingly record inaccurate information; shall make reasonable efforts to insure the completeness of their records; and shall implement procedures to facilitate inquiries concerning such records. The law further provides:

> "A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information

> concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed."

In states which do not provide by statute for juveniles to inspect their court or police agency records, the juvenile may have trouble convincing a court that he has a constitutional or common law right of access to this information, particularly the social record information, unless, of course, he can show that this data was used to make an adverse decision about him.

In Turner v. Reed, an Oregon state court upheld the denial of a former prisoner's request for access to psychiatric and psychological evaluations on the ground that this type of subjective, evaluative material was exempt under the state's open records law.[145] The Court was impressed by the argument that the subject had little interest in or potential benefit from access to this type of non-factual, subjective and evaluative material. This type of reasoning, if applied in a juvenile case, would make it difficult for a juvenile or his designee to obtain access to his social records.

Juvenile Records for Defense in Juvenile Adjudications

In cases where the juvenile and his attorney require access to his juvenile record in order to effectively "defend" the juvenile, there is little doubt that such access is required. The Federal Youth Corrections Act implicitly authorizes such access in stating that during the course of a juvenile proceeding in federal court all records relating to the proceeding must not be disclosed, except to the "judge, counsel for the juvenile and the government, or others entitled under this section to have sealed records."[146]

Many state juvenile codes expressly give juveniles and their attorneys a right to inspect any reports or other information relied upon by the juvenile court.[147] Furthermore, surveys indicate that almost all juvenile courts have adopted formal or, at least, informal rules which give juvenile attorneys access to all juvenile records relied upon by the court.[148]

In Kent v. United States the Supreme Court said that access to relevant juvenile court records by the juvenile's attorney is guaranteed by the Constitution. Kent held that before a juvenile court could make a significant decision affecting a juvenile (in that case a decision to waive the juvenile court's jurisdiction) the juvenile's attorney must have access to all information on which the court would rely, including any social record information.[149] The Court cited the District of Columbia Federal Court of Appeal's opinion in Watkins v. United States, wherein it held:

> "All of the social records concerning the child are usually relevant to waiver since the Juvenile Court must be deemed to consider the entire history of the child in determining waiver.
>
> * * *
>
> The child's attorney must be advised of the information upon which the Juvenile Court relied . . . .".[150]

Chapter Five

DISCLOSURE OF JUVENILE RECORDS TO RESEARCHERS

This chapter covers the circumstances under which researchers may obtain access to juvenile justice records. Under federal law researcher access is prohibited. However, under the law in many states researchers are expressly permitted to obtain juvenile court records. Juvenile records maintained by law enforcement agencies are less apt to be covered by state statutes. In addition, many of the state statutory access provisions place sharp restrictions upon researcher use and disclosure of juvenile data.

In states which do not include researcher access provisions in their juvenile code, researchers may be able to obtain access by convincing a court that they have a "legitimate interest" in the records. The chapter notes that researchers have charged that various restrictions on researcher access to and use of juvenile data make it difficult to conduct longitudinal research about juvenile recidivism and about career crime patterns.

Federal Law

Under federal law, research groups cannot obtain access to legal or social juvenile court records for research purposes. The Federal Youth Corrections Act prohibits the disclosure of juvenile court records except in six specified circumstances, none of which cover researchers.[151]

State Law

However, under state law the result is often different. The Department of Justice Regulations permit states and local criminal justice agencies to disseminate juvenile records to individuals and agencies for the express purpose of research, or evaluative or statistical activities, pursuant to an agreement with a criminal justice agency.[152]

Furthermore, 17 states now make express provision in their juvenile codes for access to juvenile records for research or statistical purposes.[153] However, most of those statutory provisions cover only juvenile court records, not police records. Moreover, many of these statutes require researchers to get a court order, and they place restrictions on the researchers' use of the data in order to protect the anonymity of the juveniles. Colorado's statute, for example, permits records of court proceedings to be inspected, with the consent of the court, by persons conducting "pertinent research studies." Essentially identical provisions appear in the Hawaii, Idaho, Maine, South Dakota and Utah juvenile codes.

The Georgia statute provides that the court may permit researchers to inspect juvenile court records under whatever use and disclosure restrictions the court deems proper.

Indiana has adopted a detailed provision for researcher access which requires the court to find that the researcher's proposed safeguards are adequate to protect the identity of each juvenile whose records the researcher plans to review.

Some of the juvenile codes prohibit researchers' access to data which personally identifies juvenile offenders. Iowa's juvenile code, for instance, states that access to juvenile court records may be permitted by court order to a researcher provided that "no personal identifying data shall be disclosed to such a person."

Mississippi's Youth Court Act has an identical provision, except that the court can release identifying data if it is convinced that this is "absolutely essential" to the research purpose.

West Virginia's statute permits the release of juvenile court records, and law enforcement records, pursuant to court order to a person doing research, on the condition that information which would identify any juvenile may not be disclosed.

Other states permit researchers to have access only if they are conducting research at the request of a state agency. The Virginia statute, for instance, falls into this category.

Also, as already noted, practically every state statute permits juvenile courts to issue orders making juvenile records available to persons with a legitimate interest in the juvenile or in the work of the court or the juvenile system. Although no court opinions were found in which researchers sought access under this type of provision, a proper research project may well qualify under this standard.

In summary, juvenile records, and particularly juvenile court records, are expressly made available to researchers in many states, subject to court order and various restrictions to protect the confidentiality of the records and, in some cases, the anonymity of the juvenile.

Although researchers enjoy relatively broad access to juvenile data, confidentiality restrictions, while important to protect juvenile rights, may have a negative impact upon researchers' ability to do longitudinal research about topics such as juvenile recidivism and career crime. Researchers wishing to do this kind of work must strike a deal with several juvenile and adult agencies and must get their approval to link juvenile and adult records. The researcher must then be able to actually link an individual's juvenile and adult records--no easy task in states that make juvenile data available to researchers only without personal identifiers. Not surprisingly, researchers complain that juvenile justice confidentiality and privacy standards, together with the legal, administrative and physical separation of juvenile and adult record systems, makes longitudinal juvenile research expensive and difficult, if not impossible.[154]

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Chapter Six

DISCLOSURE OF JUVENILE RECORDS TO NONCRIMINAL JUSTICE ORGANIZATIONS, THE MEDIA AND THE PUBLIC

This chapter deals with disclosure of juvenile justice data outside of the juvenile and criminal justice systems. Sharing juvenile data within the juvenile or, to a lesser extent, the criminal justice systems is not thought to label and stigmatize juvenile offenders. However, disclosures outside of these systems, according to many observers, stigmatizes the juvenile and imperils his chances for rehabilitation and reassimilation.

Despite pressures to relax juvenile confidentiality, the basic rule continues to be that juvenile record information cannot be disclosed outside of the juvenile and criminal justice systems--except to record subjects and to researchers. Federal courts are flatly prohibited from making such disclosures. Furthermore, the Department of Justice Regulations prohibit many state and local agencies from disclosing juvenile data outside of the systems, unless expressly authorized to do so by federal or state law. And the law in most states not only fails to authorize such disclosures, it often expressly prohibits them.

The second section of this chapter identifies those factors which, notwithstanding the basic rule of confidentiality described above, foster the disclosure of juvenile data to non-juvenile or criminal justice agencies. The section identifies four potential sources for such disclosures: (1) police agencies which are not covered by the Department of Justice Regulations or by state confidentiality provisions or which are not in full compliance with these authorities; (2) the courts, pursuant to their power to release data, upon petition, to parties with a "legitimate interest" in the data; (3) the juvenile himself; and (4) most importantly, new provisions in state statutes which make juvenile adjudication or charging information concerning serious offenses available to the public.

The availability of juvenile data over the last ten years has been subject to two diverging trends: a decrease in permissible, selective disclosures based upon police agency discretion; and an increase in across-the-board public disclosures based upon statutory public record provisions.

Factors that Make Juvenile Data Confidential

In general, juvenile record information, both law enforcement and particularly court records, is not available to governmental non-criminal justice agencies, private organizations, the media or the public. Federal law flatly prohibits the disclosure of juvenile court records held by federal courts to non-criminal and non-juvenile justice agencies, private employers, the press or the public. In fact, the Federal Youth Corrections Act instructs federal courts that if the inquiry is "related to an application for employment, license, bonding, or any civil right or privilege," the court's response "shall not be different from responses made about persons who have never been involved in a delinquency proceeding."[155]

The Department of Justice Regulations prohibit those state and local criminal justice agencies which are covered by the Regulations from disclosing juvenile record information to any non-criminal justice agency "unless a statute, court order, rule or court decision specifically authorizes dissemination of juvenile records." (emphasis added)[156]

Statutes in several states make juvenile delinquency adjudication information available to the public; however, apart from these public record provisions, few if any states or localities have adopted statutory schemes which specifically authorize the disclosure of juvenile records to non-criminal justice agencies. None of the state juvenile codes expressly authorize dissemination of juvenile record information to governmental non-criminal justice agencies.[157] At most, it can be argued that the juvenile statutes in a few states contain broad language which arguably covers governmental, non-criminal justice agencies. Delaware's statute, for example, authorizes dissemination to "other courts and public agencies," and North Carolina's code permits the "necessary sharing of information among authorized agencies." Furthermore, not one juvenile code authorizes the dissemination of juvenile record information to private employers, the media or any other private group.

Court decisions or orders authorizing or compelling disclosure of juvenile record information to non-criminal justice agencies, private organizations, the media or the public are rare. In fact, most courts that have dealt with the juvenile record disclosure issue have emphasized that if the juvenile justice system's purpose is to rehabilitate, then juveniles must be spared the stigma that comes from disclosure of a juvenile record and the attendant exclusion of juvenile offenders from educational and employment opportunities.[158]

In Monroe v. Tielsch, for example, the Washington Supreme Court, while refusing to expunge juvenile records, declared that these records must be kept confidential from employers and society.

> "This salutary goal [rehabilitation] cannot be accomplished if the arrest mechanism seriously impedes the occupational or educational opportunities of the youth that are to be served by the juvenile justice system."[159]

The Court in Tielsch cited a "poignant example" of the mischief that may be caused by the misuse of juvenile arrest records. According to the Court, a Washington state community had recently fired its Chief of Police on the basis of their discovery of the Police Chief's "relatively ancient" juvenile arrest record.

The Court held that:

> "In accordance with the principles of fundamental fairness implicit in our institutions of juvenile justice, it is my best judgment that information relating to arrests not leading to

> conviction of a juvenile may not be released under any circumstances to prospective employers or non-rehabilitative educational institutions."[160]

In many states the juvenile code not only makes the juvenile record non-public, but in addition, in an effort to further assure confidentiality, it authorizes individuals with juvenile offenses to deny that they have ever been arrested or detained or otherwise had contact with the juvenile justice system.[161]

Factors that Encourage the Disclosure of Juvenile Data

Despite these statutory and court imposed confidentiality safeguards, many observers still express the view that juvenile record information is relatively widely available to private employers, the press and the public. The President's Commission on Law Enforcement and the Administration of Justice, for example, worried that although juvenile justice records are supposed to be confidential by law, "in practice the confidentiality of these records is often violated."[162] The Supreme Court, as noted earlier, has cynically observed that the claim of juvenile justice secrecy" is more rhetoric than reality."[163]

However, much of the concern about the availability of juvenile justice data stemmed from the fact that in the late 1960's and early 1970's police departments in many states enjoyed more or less complete discretion to disseminate juvenile justice data. At that time the juvenile codes in many states restricted the dissemination of juvenile court records, but not the dissemination of juvenile records held by law enforcement agencies. Thus, in 1967 the Supreme Court could claim that police agencies had complete discretion to release their juvenile data and routinely exercised their discretion for the benefit of employers and other private decisionmakers.

> "Of more importance are police records. In most states the police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of juvenile records.
>
> * * *
>
> ...in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies."[164]

In 1970 a New York family court even stipulated to the fact that private investigators in New York could readily obtain police juvenile arrest and detention data.[165] During the same period concerned commentators decried the easy availability of police juvenile records.[166]

However, the extent of this discretion has been curtailed in recent years both by the enactment of state statutory standards covering police records and the publication in 1976 of the Department of Justice Regulations prohibiting police agencies which have received LEAA monies in support of their information systems from disclosing juvenile record data to non-criminal justice agencies. Today, roughly one-half of the police agencies, including virtually all large agencies, are bound by the Department of Justice's regulatory prohibition against public disclosure of juvenile record data. Furthermore, a significant but unknown portion of the remaining police agencies are prohibited from disclosing juvenile data to the public by state and local statutes, ordinances and regulations.

Nevertheless, it is probably still true that police records about juveniles are more apt to be available than court records. This availability is based on the fact that police agencies in some jurisdictions still enjoy discretion to release juvenile data and on the unquestioned failure of some agencies to be in full compliance with the Department of Justice Regulations or applicable state law.

Certainly, a number of studies and commentators have pointed the finger at police agencies as the culprit for the disclosure and "leakage" of juvenile justice data.[167] To the extent that police juvenile records are, in fact, more readily available than court juvenile records, a particular irony results because police juvenile records often do not contain a disposition and are otherwise less likely to be complete, accurate or up to date.[168]

In addition to police discretion, three other factors may contribute to the public availability of juvenile justice data. First, most statutes give juvenile courts discretion to release information to any party with a "legitimate interest." A survey done in the mid-1960's reported that juvenile courts were barraged with requests for records from employers, the military and others. Some of these courts reportedly routinely granted such requests.

> "Every court investigated reported a steady influx of records requests. A few judges have employed their discretionary power to establish a flat rule of refusing to release record information to anyone, but in most areas it is routinely released to the military and sometimes to private employers as well."[169]

However, this claim is now almost twenty years old and does not appear to represent current practice. No evidence was found that the military or private employers or any other segment of the public routinely seek or obtain court orders for access to juvenile data under the "legitimate interest" clause found in most state juvenile codes.

A second factor often cited as instrumental in permitting the release of juvenile record information to non-criminal justice agencies is the alleged practice of employers, the military, licensing boards and certain other private sector decisionmakers of seeking such data from the juvenile himself. One court described the phenomenon as follows:

> "At present this legislative policy of confidentiality suffers erosion, in practical terms, by the omnipresent inquiry 'Have you ever been arrested?' This question appears on practically every application for employment, college admission, business license or other undertaking open to young persons. Indeed some employers often require a prospective employee to permit actual inspection of his juvenile court files so that the employer may make his own check of the juvenile's history. More often, however, employers and others will simply reject an application from anyone who admits to the fact that he has been the subject of juvenile court proceedings.[170]

Of course, as noted earlier, many state codes permit a juvenile to respond to such questions by denying the existence of his record, particularly if the record has been sealed. Furthermore, the growing sensitivity and sophistication of employers may have led to a decrease in at least overt efforts by employers to determine if applicants have juvenile justice records.

The third factor is clearly the most important and seems to be increasing in importance. A number of state juvenile codes expressly provide that certain juvenile justice data is public. As noted earlier, over the last ten years seven states, Alaska, Delaware, Georgia, Mississippi, Nevada, New Jersey and Pennsylvania, have modified their juvenile codes to authorize the public release of the names and delinquency record information of juveniles adjudicated delinquent. In all of these states the juvenile must either have a prior record or be found to have committed a serious offense before the public disclosure is triggered.

In addition, a number of states make juvenile arrest or charging data public. Here too, the public disclosure provision is triggered only by arrests for serious offenses. Maine's statute, for example, admits the general public to juvenile proceedings involving homicide or certain serious offenses, and also provides that all records of these proceedings are public. Indiana's juvenile code states that records of proceedings involving offenses that would be adult crimes are open to the public.

Iowa's code states that records of juvenile proceedings involving charges of delinquency are public records unless the public was excluded from the proceedings by court order. Missouri makes juvenile records public if the offense charged is equivalent to murder or to a class A felony; Montana if the offense would be a felony; and New Mexico if the juvenile has previously been adjudicated delinquent.

Statutes in Nebraska and Washington go even further. Regardless of the seriousness of the charge or the adjudication, Nebraska makes all legal court records public. Only social records remain confidential. Similarly, Washington's statute states that legal records of juvenile courts shall be open to public inspection until sealed.

In summary, juvenile record information, while not readily available outside the criminal and juvenile justice systems, is also not entirely secret. Juvenile justice statutes customarily prohibit the public disclosure of juvenile court record information except for several states which make records of arrests for serious offenses or records of adjudications for serious offenses public. In addition, in some jurisdictions, police juvenile records may be more available than court records.

The availability of juvenile record data over the last ten years has been subject to two divergent trends. On the one hand, police discretion to disclose juvenile data has been restricted. On the other hand, statutory provisions have been adopted in many states which make adjudication data and/or arrest data about serious offenses public. The ultimate effect may not change the actual amount of juvenile data which is disclosed. However, the system has become more formal and selective; and discriminatory disclosures which tend to occur when police discretion is involved have been replaced by more uniform disclosures of qualified data to all members of the public.

PART FOUR

JUVENILE RECORD CONFIDENTIALITY AND THE MEDIA'S COURTROOM ACCESS AND PUBLICATION RIGHTS

This part of the report deals with two media issues which sharply affect juvenile justice record confidentiality: the media's access to juvenile court proceedings; and the media's right to publish the names of juveniles who are arrested or convicted.

There are two chapters in this part. Chapter One discusses the media's right and opportunity to attend juvenile court proceedings. The chapter covers both statutory and constitutional standards, and finds that the media does not have a constitutional right to attend juvenile court proceedings. However, some states and courts now permit the media to attend, particularly when juveniles are tried for serious offenses.

Chapter Two discusses the statutory and constitutional standards which apply to the media's publication of the names and photographs of juvenile arrestees and offenders. In some states, the media is authorized to publish such information if the juvenile is accused or convicted of a serious offense. Moreover, a recent Supreme Court decision holds that if the media obtains a juvenile's name from a public or lawful source, a state cannot prohibit the media from publishing that name without running afoul of the media's First Amendment rights.

Chapter One

MEDIA ACCESS TO JUVENILE COURT PROCEEDINGS

Increasingly, state statutes or juvenile courts are permitting media representatives to attend juvenile court proceedings, with the admonition that they not publish the juvenile's name. However, in cases where juveniles are charged with serious offenses the media may be admitted without publication restrictions.

In the absence of a statutory or administrative authorization to attend a proceeding, the media cannot argue that it has a right of access based upon the Constitution. However, juvenile defendants may have a constitutional right to insist upon an open proceeding. Juvenile defendants probably do not have a constitutional right to insist upon a closed proceeding.

Statutory Standards

Traditionally, the public and the media have been excluded from attending juvenile court proceedings. In many states this exclusion has been based upon express language in the juvenile code. New Hampshire's statute, for example, expressly permits only the parties, witnesses, counsel, the county attorney, the attorney general and persons with official duties to attend juvenile proceedings.

However, recently more juvenile courts have been willing to admit the public and the media. Thirteen state statutes now expressly authorize the media to attend juvenile proceedings, with the caveat that the media is not permitted to reveal the identity of the accused juvenile.[171]

In a few states the juvenile code permits the public, including the media, to attend juvenile proceedings without restrictions on subsequent dissemination or publication. Customarily, these provisions only apply if the youth is charged with particularly serious conduct which would be a felony if done by an adult. For example, Maine's statute excludes the public from juvenile proceedings as a general rule, but not if the juvenile is charged with an offense that, if committed by an adult, would be classified as a serious homicide. Delaware's statute also opens juvenile proceedings to the public if the offense charged would be a felony if committed by an adult.

In most other states the opening or closing of the proceeding is left entirely to the judge's discretion. In a few of these states the juvenile code sets standards to guide the judge's determination. In Iowa, for instance, the statute allows the juvenile court on its own motion, or on the motion of any party before the court, to exclude the public from the hearing if the court determines that the possibility of harm to the juvenile outweighs the public's interest in having an open hearing. Even if the hearing is ordered closed the court may, "admit these persons who have a direct interest in the case or in the work of this court."[172] Surprisingly, courts which have interpreted similar language in the juvenile codes in Minnesota and California have held that the news media has a "direct interest" in the proceeding.[173] In a similar and equally odd vein, one state, Illinois, excludes the general public from juvenile proceedings, but permits the media to attend.[174]

Constitutional Standards

The extent to which constitutional standards may compel a closed or open juvenile hearing is still in some doubt, at least as regards the juvenile's right to insist upon an open or closed hearing. However, there is little doubt as to the absence of constitutional rights for the public and press. The Supreme Court's decision in Gannett v. DePasquale makes clear that the public and the press do not have a constitutional right to insist upon an open adult criminal proceeding.[175] Presumably, the public's and the media's constitutional arguments for opening a juvenile hearing would be even less persuasive.

By implication the Supreme Court has indicated that it would have no difficulty in upholding a juvenile court decision to close its proceedings. In Oklahoma Publishing Company v. District Court in and for Oklahoma County, the Court upheld the constitutional right of the media to publish the name of a juvenile which the media obtained by attending an open hearing.[176] However, the Supreme Court implied that the juvenile court could have readily and legally closed such a hearing, thereby preventing the media from obtaining the juvenile's name.

The juvenile's constitutional right to open or close a hearing presents a more difficult question. In criminal trials the courts have held that a defendant has a near absolute right to insist upon a public trial, and a qualified right to insist upon the closing of the proceeding if closing the proceeding will help to assure a fair trial.[177] However, the courts are split as to whether a juvenile defendant can insist upon opening a juvenile proceeding.[178] At least one court has reasoned that a juvenile's demand for an open proceeding is merely a misguided attempt to attract attention.[179]

To date, the courts have not issued an opinion on constitutional grounds concerning a juvenile's right to close a proceeding to the public. In all likelihood this would be considered a matter for state discretion. In Gault, the Supreme Court indicated that the states have wide discretion to establish disclosure policies regarding juvenile records and proceedings.[180]

Chapter Two

MEDIA PUBLICATION OF INFORMATION ABOUT JUVENILES

This chapter discusses the statutory and constitutional standards which apply to the media's publication of the names and photographs of juvenile arrestees and offenders. In many states the media is statutorily prohibited from publishing such information. In a few states the juvenile code makes the name of the juvenile public if he has been convicted of a serious offense or, more rarely, if he has been charged with a serious offense.

A 1979 Supreme Court decision imperils many of the state non-publication statutes because it holds that the media has a First Amendment right to publish the name of any juvenile if it has lawfully obtained that data.

Statutory Standards

The Federal Youth Corrections Act and a number of state statutes expressly prohibit the media's publication of information concerning juvenile offenders. The federal law states:

> "[N]either the name nor the picture of any juvenile shall be made public by any medium of public information in connection with a juvenile delinquency proceeding."[181]

New Hampshire's statute contains a strict publication prohibition which includes a criminal penalty:

> "It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any juvenile arrested, without the

> express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any juvenile court."

South Carolina's statute provides that the name or picture of any juvenile shall not be made public by any newspaper or radio or television station without court approval. Wyoming's statute similarly states that law enforcement records concerning juveniles may not be disclosed for newspaper publication without the written consent of the court. And South Dakota's law provides that there shall be no publication, broadcast (or other publicity) of the name, picture, residence, or identity of any juvenile, parent, guardian or witness unless specifically permitted by court order.

In a number of states the juvenile code permits the media to publish the name of the juvenile offender, in the event of serious or repeat offenses. Indeed, as noted earlier, statutes in seven states now make the name and juvenile history data of serious juvenile offenders public information. Alaska's statute, for example, states that the name and picture of a juvenile may be published if he is adjudicated for a second time for an offense that would be a felony if committed by an adult. Virginia's law provides that, if the public interest requires, the court may release the name and address of a juvenile adjudicated for an offense that would be a serious felony if committed by an adult. Delaware's statute covers arrests rather than adjudications and provides that if a juvenile is arrested for an offense classified as a felony the clerk "shall release the name of the child and the names of his parents upon request by a responsible representative of public information media."

Constitutional Standards

A 1979 Supreme Court decision indicates that state and federal statutes which prohibit the media from publishing the names of juvenile offenders in all circumstances may be unconstitutional. In Smith v. Daily Mail Publishing Company, the Supreme Court ruled unconstitutional a West Virginia statute which made it a crime for a newspaper to publish, without written approval of a juvenile court, the name of any youth charged as a juvenile offender.[182] The Court said that where the media had lawfully obtained the alleged juvenile offender's name, it was a violation of the First Amendment's right of a free press to prohibit the publication of the juvenile's name.

Smith involved a 14-year-old boy who fatally shot a classmate in the junior high scool of a small West Virginia community. The juvenile assailant fled from school and after a 3-hour search was returned to school handcuffed. The press learned the name of the assailant from eyewitnesses. A local newspaper subsequently published the boy's name and his picture on the front page. Grand jury indictments were returned for violation of West Virginia's juvenile anti-publication statute and the newspaper defended, citing its First Amendment rights.

The Supreme Court recognized the state's interest in preserving the anonymity of juvenile identities but said that this interest is outweighed by the First Amendment's interest in assuring the right to publish truthful information. The Court emphasized that "state action to punish publication of the truthful information can seldom satisfy constitutional standards."[183]

It is important to emphasize that Smith is a publication case, not an access case. In other words, nothing in Smith or any other Supreme Court decision gives the press or the public a constitutional right of access to court proceedings or records.[184] Therefore, the state is free to close its juvenile proceedings and to make confidential juvenile records or other information emanating from juvenile proceedings. All that Smith holds is that if the juvenile information gets into the public domain or is otherwise lawfully obtained by the press, the states cannot constitutionally prohibit the press' subsequent publication of this data.[185]

In summary, if a state wishes to preserve juvenile offender anonymity and confidentiality, Smith makes it imperative that the juvenile court and the police take steps to insure that juvenile information is not inadvertently made available to the press or the public; and imperative that the juvenile court, upon taking jurisdiction, issue orders prohibiting the public's access to and use of any identifying information about the juvenile which is generated by the court proceedings.

PART FIVE

THE DEBATE OVER THE CONFIDENTIALITY OF JUVENILE JUSTICE RECORD INFORMATION

There are almost as many views about juvenile justice secrecy and confidentiality as there are participants in this debate. And, as a practical matter, most participants--from juvenile social workers at one pole to newspaper reporters at the other--advocate a moderate approach which balances confidentiality and publicity interests. However, for the sake of contrast, we discuss the competing positions from the perspective of the opposite sides of the spectrum.

Certainly it is true that opponents of strict or absolute confidentiality for juvenile justice records have become increasingly vocal about the need to relax existing confidentiality statutes.[186] Predictably, proponents of strict confidentiality argue with equal vigor that confidentiality is essential for both the juvenile and society.[187] This part of the report identifies both the "pro" and "con" arguments regarding juvenile justice confidentiality. There are three chapters to this part. The first chapter identifies four arguments supporting confidentiality: (1) publicity only "rewards" criminal conduct; (2) publicity traumatizes erring juveniles; (3) publicity deprives juveniles of opportunities for employment and other benefits; and (4) publicity is inherently unfair.

The second chapter identifies two arguments which support the relaxation of confidentiality: (1) publicity promotes public safety; and (2) publicity promotes oversight and supervision of the juvenile justice system.

The third chapter identifies the basic questions raised by the juvenile confidentiality debate. Without trying to provide answers to those questions, the discussion suggests the direction in which the policymaking process may be moving.

Chapter One

ARGUMENTS IN SUPPORT OF CONFIDENTIALITY

Proponents of confidentiality identify a number of interests served by confidentiality--and most of these interests, in turn, serve the traditional goal of the juvenile justice system. One interest arguably served by closing juvenile justice proceedings and safeguarding the confidentiality of juvenile justice records is to prevent the "rewarding" and reinforcing of juvenile misconduct which arguably occurs when juvenile offenders receive official publicity and acknowledgement.

Publicity Rewards and Reinforces Criminal Conduct

Many social workers and juvenile court workers, for example, oppose open juvenile proceedings out of fear that this gives the juvenile an audience before which to "show off."[188] Some researchers have also argued that publicity reinforces a juvenile offender's "tough guy" image; provides needed recognition; and actually increases the juvenile's status among his peers. Thus, it is argued that publicity encourages the juvenile to commit further acts of delinquency.[189]

The difficulty with this theory is that it is just that--a theory. There is no empirical support for this theory and indeed, it is the sort of theory that may not be susceptible to empirical validation. One commentator summed up empirical attempts to validate this hypothesis by concluding, "Empirical research attempts to support the labeling hypothesis have been inconclusive."[190]

Publicity Stigmatizes and Labels Juvenile Offenders

Many proponents of juvenile confidentiality also argue, somewhat inconsistently, that publicity, rather than rewarding juveniles, may actually traumatize and scar them so that emotionally they are less susceptible to efforts at rehabilitation and assimilation into the mainstream of society.[191] These proponents claim that publicity dramatically affects a juvenile's self concept and that a juvenile's self concept determines whether or not he will become delinquent.[192] This theory also lacks empirical validation.

The closest thing to an empirical validation of the trauma theory is found in the work of two psychologists who investigated the effects of publicity on an 11-year-old juvenile offender.[193] The psychologists worked in cooperation with the juvenile's father, his attorney and the juvenile court judge over an eight-month period in 1976. During that time more than 40 separate newspaper articles appeared about the boy. The boy's name was published in a number of the articles and one article contained his photograph. Several of the articles referred to the case as that of the "11-year-old boy" or the "black boy who shot a railroad switchman." One article was headlined "Young Slayer Found Delinquent."

The psychologists concluded that frequent publicity made the boy fearful and confused about his peer's reactions, and distrustful of his father. The psychologists did not find that the boy's self perception changed as a result of his public labeling as a "slayer" and "criminal." However, they did find that his feelings of dependency and vulnerability increased.[194]

Some critics of confidentiality respond that if publicity in fact harms juvenile offenders, there is a salutary effect to this because it acts as a deterrent against juvenile crime. Juveniles are served notice that their crimes will result in unwanted publicity.[195] The New Jersey Supreme Court recently endorsed the view that publicity for juvenile offenders may be desirable because of its deterrent effect. In State of New Jersey in the Interest of B.C.L.,[196] the Court was called upon to apply New Jersey's new juvenile justice code. It provides, among other things, that juvenile adjudication data about serious offenses is public information unless the juvenile court decides to withhold the data for "good cause." In this case the Court refused to order the withholding of information about a 16-year-old's conviction for arson and extortion because the Court found that the publicity's alleged harmful effect on the juvenile's rehabilitation was outweighed by the public's interest in disclosure. The Court concluded that this public interest "embraces... 'the possible salutory effect of publicity on deterrence of the affected juvenile and others'."[197]

Other critics argue that publicity has no positive or negative effect on the juvenile crime rate. They point out that prejudice, poverty, alienation, abuse and neglect create the type of environment in which juvenile crime is likely, and indeed inevitable. Since juveniles who become involved with the juvenile justice system either return to the environment that breeds this crime or go to a correctional institution with juveniles from similar environments, publicity is irrelevant.[198]

Publicity Makes it Difficult for Juvenile Offenders to Obtain Employment and Other Valued Statuses

Although proponents of confidentiality may sometimes concede that reasonable men can disagree about the effect of publicity on a juvenile's self concept and behavior, they steadfastly maintain that there can be no argument about the effect of publicity on the behavior of employers, creditors, licensing agencies and other decisionmakers. Both common sense and a relatively large body of empirical data insist that publicity and the availability of juvenile justice record information stigmatizes the juvenile and makes it much harder for him to obtain a job, join the military, get credit, obtain licenses, or otherwise participate constructively in society.[199]

Justice Rhenquist's concurring opinion in Smith v. Daily Mail Publishing Co., emphasizes the longstanding and accepted view that secrecy and confidentiality in the juvenile justice system is beneficial, indeed necessary, because, among other things, "exposure may cause the juvenile to lose employment opportunities." Justice

Rhenquist argues that secrecy is "designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the state."[200]

In this regard, record dissemination policies are thought to be far more important than policies regarding publication of contemporaneous juvenile offender information. One commentator expressed this view as follows: "Those interested in the background of the juvenile--employers, licensing agencies, the armed forces and educational institutions--seek out cumulative records of the individual's past conduct, rather than specific, isolated news reports."[201]

Critics of juvenile justice confidentiality contend that even if juvenile offenders are stigmatized and thereby find it more difficult to obtain jobs and other valued resources or statuses, this turns out to be irrelevant because juvenile offenders are so unlikely, regardless of confidentiality or publicity, to be rehabilitated.[202] They argue that after all these years of insisting upon secrecy and confidentiality in order to help rehabilitate juvenile offenders, one thing is crystal clear--juvenile offenders are seldom rehabilitated.

Indeed, the juvenile recidivism rate--however it is measured and whatever its exact amount--significantly exceeds the adult recidivism rate.[203] Thus, critics contend that if confidentiality is necessary and proper only, or at least primarily, because it promotes rehabilitation and if rehabilitation turns out to be illusion, then there is little reason to worry about maintaining confidentiality. One commentator has expressed this argument as follows:

> "Traditionally the closure of juvenile court hearings is premised solely upon the contribution of anonymity toward the ultimate rehabilitation of juvenile offenders. Absent the underlying justification of rehabilitation, there is no interest in closed juvenile court hearings."[204]

Publicity is Unfair to Juveniles

Advocates of juvenile justice confidentiality also argue that confidentiality for juvenile records and proceedings--even if not warranted based on the principle of rehabilitation--is warranted based on the principle that juveniles are not criminally responsible for their actions. They point out that juvenile offenders are immature and are not considered capable of exercising adult judgment. Juveniles are not considered competent to enter into binding contracts; nor are they thought capable of exercising the judgment to vote. Thus, it is both illogical and unfair to expose a juvenile's misconduct to the full gaze of society or to hold juveniles publicly accountable for their failure to exercise mature and proper judgment.[205]

Proponents of confidentiality also emphasize that the dissemination of information about a juvenile offender not only harms and stigmatizes the juvenile--it also harms and stigmatizes his family.[206] Obviously, it is harsh and unfair to publicly embarrass the innocent parents and siblings of a juvenile offender.

To these arguments critics of confidentiality respond that as the juvenile justice system moves closer to a criminal model and away from a non-culpability model, juvenile offenders will come to understand that they are criminally responsible for their misconduct and that they thereby waive their right to anonymity and privacy.[207] They will also come to understand that the adverse effects of publicity and dissemination of their record are part of the punishment. Critics maintain that claims for confidentiality and "fairness" made by juvenile offenders and their families are simply outweighed by the societal interests served by permitting expanded publicity and dissemination of juvenile offender information.

Chapter Two

ARGUMENTS IN SUPPORT OF PUBLICITY

Critics of confidentiality not only claim that arguments which support confidentiality are unpersuasive, they cite a couple of positive, societal interests served by the public availability of information about juvenile arrestees and offenders.

Publicity Promotes Public Safety

Proponents of publicity argue that publication of information about juvenile offenders is important because it serves society's valid need for identification of dangerous offenders. They urge that in an era when criminal acts, including serious criminal acts, are frequently committed by juveniles, it is critical that the public is assured that those offenders, whatever their age, are identified and punished.

As long ago as the mid-1950's, newspaper editorials campaigned for public identification and punishment of juvenile offenders.

> "...the kid who prowls the city with a loaded gun doesn't even deserve a first break. At 14, he can kill you just as though he were 40. We think [the juvenile court judge] serves no useful purpose by trying to keep Tulsans from learning the names of those youngsters who have gone forth to rape or who are equipped to kill."[208]

Critics of existing confidentiality strictures contend that a relaxation of secrecy is necessary in order to warn employers, educators and others who may entrust responsiblities to or deal with juveniles that a particular juvenile may be unsuitable for certain duties, or may be violent and dangerous.[209] According to this view, juvenile justice authorities are too often concerned with the welfare of the juvenile at the expense of societal safety. As one juvenile court judge has observed, "The juvenile justice system's first responsibility is to society, to promote voluntary compliance with society's rules, to safeguard the public.[210]

The New Jersey Supreme Court's 1980 opinion in the case captioned In the Interest of B.C.L., made exactly this point. "The gravity of the offense can also be a sufficient warrant for disclosure... Implicit in the public's recognized right to be informed is its ability to have the information necessary for its security."[211]

The late J. Edgar Hoover put it more bluntly:

> "Are we to stand idly by while fierce young hoodlums--too often and too long harbored under the glossy misnomer of juvenile delinquents--roam our streets and desecrate our communities?"
>
> * * *
>
> Recent happenings in juvenile crime shatter the illusion that soft-hearted molly coddling is the answer to this problem."[212]

Proponents of confidentiality argue that there is no empirical evidence to suggest that the availability of criminal history data to employers, educators or others promotes public safety. Indeed, the only empirical data about the effect of such availability indicates that it results in the closing of employment, educational or other opportunities to offenders. When these doors are closed, offenders are more likely, not less likely, to return to criminal and anti-social conduct, thereby increasing, not decreasing, the danger to society.

Publicity Promotes Public Oversight of System

A number of observers of the juvenile justice process, including jurists, also worry about the effect of juvenile justice secrecy on the public's right to evaluate the juvenile system's performance and their faith in this performance. A New York State appellate court, for instance, admonished juvenile courts against closing their proceedings on the grounds that the community's need to scrutinize juvenile justice activities outweighs considerations about the effect of publicity on a juvenile.

> "Whether public exposure deters or rewards the young offender has been debated. In either case, those considerations should be subordinated to the community's need to observe the workings of its justice system with regard to accusations of major proportions."[213]

The critics also argue that unless the press can use a juvenile's name in a story the press will have comparatively little interest in covering juvenile justice matters. And if the juvenile justice system is sheltered from press coverage, its performance and accountability may suffer. An Alaska Supreme Court was very blunt about the enervating effect of secrecy on juvenile court performance.

> "We cannot help but notice that the children's cases appealed to this court have often shown much more extensive and fundamental error than is generally found in adult criminal cases and wonder whether secrecy is not fostering an attitude of casualness toward the law in children's proceedings."[214]

Critics of secrecy in juvenile proceedings and confidentiality in juvenile records also argue that a climate of secrecy handicaps juvenile justice and juvenile welfare agencies in coordinating their activities--notwithstanding that these agencies are the customary champions of confidentiality and are customarily exempt from its strictures.

> "From the schoolroom to the police precinct, from the courtroom to the juvenile jail, secrecy so pervades the system that even officials who ought to be informed about a child's criminal conduct are kept in the dark."[215]

To these arguments proponents of confidentiality respond that oversight of the juvenile justice system is not dependent upon the disclosure of personally identifiable information. Provided that the public and its elected representatives are sufficiently interested in the juvenile justice system, there are ample opportunities for review and oversight.

Chapter Three

ESSENTIAL ELEMENTS OF THE POLICY DEBATE

The foregoing discussion demonstrates the complexities in the debate over juvenile justice confidentiality. Although there is a danger in over simplification, this debate seems to turn on three basic and extremely difficult issues.

1. What kind of confidentiality and disclosure policy is most likely to have a positive effect on juvenile offenders' future conduct, and does the effect depend upon the age of the juvenile or the extent and nature of his juvenile record? Assuming that everyone's goal is to reduce juvenile recidivism and increase the chances that juvenile offenders will become constructive members of society (i.e., will be rehabilitated), the key question is whether confidentiality or disclosure promotes this goal.

   Probably disclosure policies have little measurable impact upon rehabilitation and thus we should look to other factors in setting disclosure policy.

2. How much does the public (or segments of the public, such as criminal justice agencies, licensing boards or employers) need to know about specific juvenile offenders in order to assure the public's physical safety or confidence; and how much needs to be known to assure society's efficient economic operation; or the effective administration of juvenile and criminal justice, or productive statistical and longitudinal research.

Here too there are no dispositive answers. Certainly part of the answer is that there needs to be different disclosure policies for different segments of the public, depending upon the criticality and nature of each group's need for juvenile record data and their accountability and reliability in handling this data.

3. Regardless of the practical effects of confidentiality or disclosure on juveniles or on society, is it fair and proper for society to publicly brand a young person on the basis of his misdeeds? Many observers still hold the view that it is both unfair and improper to publicly stigmatize children for their misdeeds--so long as the juvenile is younger rather than "older" and so long as his misdeeds are not continually repeated or are not of a violent or heinous nature.

While the debate over these three issues is sure to rage for many years ahead, the shape of emerging policy may already be visible. Extreme positions are being avoided in favor of a more balanced approach which encourages the selective disclosure of juvenile justice data in certain defined circumstances.

CONCLUSION

Elected officials, justice professionals, courts and other institutions of our society are contributing to a re-evaluation of juvenile justice information policy. The tenet that juveniles who commit crimes are not culpable is being challenged as the public's safety and economic well being is increasingly threatened by children engaged in criminal behavior. The result is likely to be a more formal process of juvenile justice and a shift in attitudes about the confidentiality of records from these proceedings.

As prosecutors and judges come to treat juveniles, particularly older ones, more and more like adults who commit similar crimes, the differences in policies which distinguish the treatment of these groups will blur. Policies governing information about the handling of juveniles by law enforcement, judicial and corrections agencies will begin to resemble comparable policies in the adult process. The challenge to policymakers in the years ahead, then, will be to identify and preserve those qualities of information policy which protect juveniles in a way that reflects the principles and character of the society.

Strategies to prosecute violent offenders, identify career criminals and punish habitual offenders require information to succeed; information which does not necessarily differentiate behavior when an adult from behavior when a juvenile. These initiatives are combining with the other forces we have explored to frame a new juvenile justice information policy for the nation.

FOOTNOTES

[1] We use the terms "juvenile justice record information", "juvenile justice information," "juvenile information," "juvenile justice data," and "juvenile data" to mean information about a particular juvenile maintained by law enforcement agencies, courts or other governmental agencies concerning the apprehension, prosecution or adjudication of that individual in connection with a juvenile delinquency proceeding or the equivalent.

Except where the context indicates otherwise, this Report uses the term juvenile to refer to an individual 18 years of age or younger.

The Federal Youth Corrections Act defines a "juvenile" as a person who has not attained his 18th birthday, 18 U.S.C. §5031. The juvenile codes in 39 of the states set 18 as the maximum age for juvenile court jurisdiction. The remaining states set the maximum at 17 or 16. See, Reports of the National Juvenile Justice Assessment Centers, Vol. III., p. 125, Office of Juvenile Justice and Delinquency Protection (1979).

[2] See the discussion in this Report beginning on page 17 and concluding on page 26.

[3] This report, although comprehensive, is by no means exhaustive. Research for the report centered on three sources: (1) secondary materials, primarily legal but including some non-legal; (2) statutes; and (3) case law. The report's observations about agency practice must be qualified in that no empirical research was done for this report and the literature review was heavily biased in favor of legal materials.

[4] Eldefonzo, Law Enforcement and the Youthful Offender, John Wiley & Sons, 3rd Ed. (1978) at p. 147.

[5] Id. *and, see*, Mack, "The Juvenile Court," *Harv. L. Rev.*, 23; 104, 106 (1909).

[6] *State v. Guild*, 5 Halst. 163, 10 N.J.L.R. 163 (1828). *See, In re Gault*, 387 U.S. 1, 80, Harlan J. concurring.

[7] Eldefonzo, *supra*, note 4 at p. 147.

[8] "The Juvenile Court," *supra*, note 5 at p. 107.

[9] Eldefonzo, *supra*, note 4 at p. 49.

[10] *In re Gault*, *supra*, note 6 at pp. 25-26 (1967); *and see*, "Rights and Rehabilitation in the Juvenile Courts," *Colum. L.Rev.* 67: 281, 282 (1967).

[11] *In re Holmes Appeal*, 109 A.2d 523, 525 (Penn. 1954).

[12] *See, e.g.* 1899 Ill. Stat. §131; 1903 Calif. Stat. Ch. 43, §44.

[13] Geis, "Publicity and Juvenile Court Proceedings," *Rocky Mountain L. Rev.*, 30:101, 116 (1958).

[14] "The Juvenile Court," *supra*, note 5 at p. 109.

[15] U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States* (1979).

[16] *Id.*

[17] *Id.*

[18] National Institute of Education, *Violent Schools - Safe Schools: The Safe School Study Report to the Congress*, Vol. 1, pp. 2-3, U.S. Dept. of Education (1978) as reported in the *Attorney General's Task Force on Violent Crime, Final Report*, August 17, 1981, p. 82.

[19] "Serious Juvenile Crime: National Patterns," *Reports of the National Juvenile Justice Assessment Centers*, *OJJDP* (1979), Vol. II at p. 59.

[20] Zimming, "The Serious Juvenile Offender: Notes on an Unknown Quantity," *The Serious Juvenile Offender*, *Proceedings of a National Symposium*, Office of Juvenile Justice and Delinquency Prevention (1977) at p. 15.

[21] "The Characteristics of Juveniles Arrested and Adjudicated for Serious Offenses: Patterns and Trends." *Report of the National Juvenile Justice Assessment Centers, OJJDP* (1979) at p. 143.

[22] U.S. Senate, Committee on the Judiciary, *Serious Youth Crime: Hearings before the Subcommittee to Investigate Juvenile Delinquency*, 95th Cong., 2nd Sess. (1978).

[23] Geis, *supra*, note 13 at p. 120.

[24] "End of Secrecy" *supra*, note 2.

[25] Delaney, *Juvenile Records and Confidentiality*, unpublished monograph, p. 5 (1977).

[26] Geis, *supra*, note 13 at p. 115.

[27] In *Kent v. United States*, the Court said "there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." 383 U.S. 541, 556 (1966).

[28] *Id*. at pp. 555, 561-562 (1966).

[29] The Court was assisted in the reform of the juvenile justice system by the development of model juvenile justice standards published by several groups, including the Institute of Judicial Administration/ABA Juvenile Justice Standards Project; The National Task Force to

Develop Standards and Goals for Juvenile Justice and Delinquency Prevention; and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

These model standards and the teaching of the Supreme Court have been reflected in revised and updated juvenile codes in most states.

[30] Supra, note 6 at pp. 33, 41, 57 (1967).

[31] 397 U.S. 358, 361 (1970).

[32] 421 U.S. 519, 541 (1975).

[33] In McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971), the Court rejected the unqualified right of a juvenile to a jury trial, in part on the notion that jury proceedings might inject unwanted publicity.

[34] In re Gault, supra, note 6 at p. 24 (1967).

[35] 415 U.S. 308, 319 (1974).

[36] Id. at p. 320.

[37] 430 U.S. 308, 311 (1977).

[38] 443 U.S. 97, 104 (1979).

[39] Id. at p. 104.

[40] See, for example, In re Gault, supra, note 6 at p. 25; and In re Winship, supra, note 31 at p. 366.

[41] Reports of the National Juvenile Justice Assessment Centers, supra, note 19 at p. 212.

[42] Ariessohn, "Recidivism Revisited," Juvenile and Family Court Journal, Nov. 1981 at p. 63.

[43] Note, "Delinquency Hearings and the First Amendment: Reassessing Juvenile Court Confidentiality Upon the Demise of 'Conditional Access'," *U. of Calif. at Davis L. Rev*. 13: 123, 153-154, n. 115 (1979).

[44] Ariessohn, *supra*, note 42 at p. 61.

[45] Fox, "The Reform of Juvenile Justice: The Child's Right to Punishment," *Juv. Just.*, Aug. 1974, pp. 2-9; *and see* discussion in *The Serious Juvenile Offender*, *supra*, note 20 at pp. 178-179.

[46] Hudson and Mark, "Summary and Conclusions," *The Serious Juvenile Offender*, *supra*, note 20 at p. 179.

[47] *Id*. at pp. 180-181.

[48] "Strict New Rules on Juvenile Crime Adopted in Jersey," *New York Times*, July 24, 1982, p. 1.

[49] *Id*. However, references to the New Jersey statute in this report, unless otherwise indicated, are to the pre-July, 1982 statute.

[50] "Strict New Rules," *supra*, note 48.

[51] Appendix A contains an alphabetical listing of the statutory citations to every state juvenile justice code. Unless otherwise indicated, all references to state juvenile codes are to the statutes listed in that Appendix.

[52] Hudson and Mark "Summary and Conclusions," *supra*, note 20 at pp. 180-181.

[53] In *T.N.G. v. Superior Court of the City and County of San Francisco*, 484 P.2d 981, 985, 986 (Sup. Ct. Calif. 1971) the Court said that,

> "In order to protect the juvenile from the stigma of criminality often attached to adult penal proceedings,

> the Legislature has carefully avoided the use of the term "arrest" for the type of detention to which the petitioners were subjected in the present case. Welfare and Institutions Code Section 625 provides that juveniles are not subject to 'arrest' but may only be taken into 'temporary custody'."

[54] "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," *Harv. L. Rev.* 79: 775, 776-777 (Feb. 1966); *and see* "Juvenile Police Recordkeeping," *Colum. Human Rights L. Rev.* 4: 461 (1972).

[55] "Juvenile Delinquents," *supra*, note 54 at pp. 778-779.

[56] Coffee, "Privacy vs. Parens Patria: The Role of Police Records in the Sentencing and Surveillance of Juveniles," 57 *Cornell L. Rev*. 571, 581 (Ap. 1972).

[57] "Juvenile Delinquents," *supra* note 54 at pp. 778-779.

[58] Coffee, *supra* note 56 at p. 590; and Handler and Rosenheim "Privacy in Welfare: Public Assistance and Juvenile Justice." *Law and Contemporary Problems*, 31: 377, 395 (1966); *and see*, *Monroe v. Tielsch*, 525 P.2d 250, 251 (Wash. 1974).

[59] 525 P.2d 250, 251 (Wash. 1974).

[60] *Fernicola v. Keenan*, 39 A.2d 851, 852 (Ct. of Chancery, N.J. 1944) involving the creation of a fingerprint and photographic record of an adult.

[61] 271 A.2d 727, 728 (Supr. Ct. N.J. 1970). The courts reach a different conclusion, however, when the organization creating the "juvenile record" is a governmental agency other than a law enforcement agency or a court. In *Merriken v. Cressman*, 364 F. Supp. 913, 922 (E.D. Pa. 1973), a federal district court held that a school system could not collect and maintain personal information regarding 8th graders which supposedly identified potential

drug abusers. The Court said that this violated the children's constitutional right of privacy and the school could not show a reasonable connection between the information being gathered and drug abuse prevention.

[62] No. 70-2017 (S.D. N.Y. 1970).

[63] Coffee, supra, note 56 at pp. 571-574.

[64] 18 U.S.C. §5038 (d).

[65] Georgia permits the fingerprinting of juveniles only in connection with the investigation of enumerated serious crimes. Such fingerprints are available only to law enforcement officials, or upon court order, if the public interest requires, and are not permitted to be sent to a state or federal repository unless needed for national security purposes.

The Virginia statute permits the fingerprinting of juveniles who are at least 13 years old and are charged with offenses that would be felonies if committed by adults. If no petition is filed or if the juvenile court adjudication is favorable, the prints must be destroyed. If the juvenile is adjudicated delinquent and is under 13 years of age, the prints are destroyed. If a delinquent juvenile is at least 13 years old, his fingerprints may be maintained locally by the law enforcement agency that took them, and if he is at least 15 years old and is adjudicated for an enumerated serious offense, the fingerprints may be forwarded to the state Central Criminal Record Exchange.

[66] Attorney General's Task Force on Violent Crime, Final Report, August 17, 1982, Recommendation No. 58 at p. 82.

[67] "Strict New Rules" supra, note 48 at p. 1.

[68] National Court Statistics Project, National Center for State Courts, State Court Organization, 1980. Bureau of Justice Statistics, May 1982, Table #16, p. 54.

[69] Vinter, "The Juvenile Court as an Institution," President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967) at pp. 884-886.

[70] Id., and see In re Gault, supra, note 6 at p. 14, n. 14 (1967).

[71] "Juvenile Delinquents," supra, note 54 at p. 809.

[72] Delaney, supra, note 25 at p. 9.

[73] Virtually every state permits a juvenile court to waive its jurisdiction so that the juvenile can be prosecuted as an adult. Customarily, before the juvenile court can waive its jurisdiction, it must be established that: (1) the child is at least 14; (2) there is probable cause to believe that the child has committed a criminal offense; (3) there are no reasonable prospects for rehabilitating the child; and (4) waiving jurisdiction is in the best interests of the child and the community. Once in an adult court the juvenile and his records are treated just as an adult and his records would be treated.

[74] Only a tiny fraction, well under 5 percent, of juveniles who are arrested are sent to a juvenile correctional institution. Since so few juvenile offenders ever receive the benefits of treatment in a juvenile institution, some observers think that it is little wonder that juvenile offenders are seldom rehabilitated.

[75] The following provision from Minnesota's Juvenile Code is typical of the juvenile court record creation and maintenance language found in many juvenile justice statutes. "The juvenile court judge shall keep such minutes and in such manner as he deems necessary and proper. The court shall also keep an index in which files pertaining to juvenile matters shall be indexed under the name of the juvenile. After the name of each file shall be shown the file number and, if ordered by the court, the book and

page of the register in which the documents pertaining to such file are listed. The court shall also keep a register properly indexed in which shall be listed under the name of the juvenile all documents filed pertaining thereto and in the order filed. Such list shall show the name of the document and the date of filing thereof. The juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, findings, orders, decrees, judgments, and motions and such other matters as the court deems necessary and proper."

[76] Delaney, supra, note 25 at p. 9.

[77] Altman, "Juvenile Information Systems: A Comparative Analysis," Juvenile Justice, Feb. 1974 at p. 5; see also, Czajkoski, "Computer Backfire on the Ethical Mission of Juvenile Justice," Juvenile Justice, Feb. 1974 at p. 24.

[78] Supra, note 53 at p. 984.

[79] Monroe v. Tielsch, supra, note 59 at p. 251.

[80] Supra, note 6 at p. 11, n. 7.

[81] Cashman, "Confidentiality of Juvenile Court Proceedings: A Review," Juv. Just., Aug. 1973 at p. 34.

[82] La. Rev. Stat. §15-578.A(6).

[83] See, Altman, supra, note 77 at p. 2.

[84] See, Symposium, Juvenile Justice, Feb. 24, 1974 issue and specifically Phillips "Experience Acquired from the Design and Implementation of PROFILE: Utah's Juvenile Information System" at p. 12; Horvath, "A Non-technical Description of the Michigan Youth Services Information System" at p. 19; Griffeth, "Orange County Sheriff's Department Computerized Central Juvenile Index" at p. 30; and Corneilson, "Juris: A Juvenile Court Information System" at p. 35.

[85] Just as most jurisdictions label a juvenile arrest as a "detention," most jurisdictions label a juvenile conviction as a "determination of delinquency." In an effort to avoid the stigma that even the term "delinquency" carries, some states, such as New York, have dropped the term in favor of phrases such as "Persons in Need of Supervision" (PINS).

[86] 18 U.S.C. §5038 "(a) Throughout the juvenile delinquency proceeding the court shall safeguard the records from disclosure. Upon the completion of any juvenile delinquency proceeding, whether or not there is an adjudication, the district court shall order the entire file and record of such proceeding sealed. After such sealing, the court shall not release these records except to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037."

[87] 28 C.F.R. § 20.21(d).

[88] Traditionally, the drafters of state codes and judges define and use the terms "seal" and "purge" in many varied and inconsistent ways. In this report we define and use the terms "seal" and "purge" as follows. Except where the context indicates otherwise, the term "seal" means to prohibit access to juvenile history record information except to a party authorized access to the record by a court order. We use the term "purge" to mean to destroy, blot out, strike out, or efface so that no trace remains. Expunge is a synonym. Destruction of personal identifiers so that the record or entry cannot be associated with an individual is also a form of purging. These definitions are based on SEARCH Technical Report No. 27, Sealing and Purging of Criminal History Record Information (April 1981).

[89] 18 U.S.C. 5038(a).

[90] 18 U.S.C. §5021(a)(b).

[91] 606 F.2d 1226, 1244 (D.C. Cir. 1979).

[92] United States v. Doe, 496 F.Supp. 650, 653 (D.R.I. 1980); United States v. Henderson, 482 F. Supp. 234, 242 (D.N.J. 1979)

> "We have noted repeatedly that the Act was intended to eliminate the social and economic disabilities which accompany a criminal record. These same disabilities exist when an individual has only an arrest blotting his or her record."

[93] Sealing and purging provisions are a relatively new phenomenon. According to one source, as late as 1974 only about half of the states had adopted sealing or purging provisions. Altman, supra, note 77 at p. 6.

[94] *Pres. Comm. on Law Enforcement and Admin. of Justice Task Force Report: Juvenile Delinquency and Youth Crime*, at pp. 92-93 as quoted in Cashman, *supra*, note 81 at p. 34.

[95] *In the Matter of Smith*, 310 N.Y.S.2d 617, 623 (N.Y. Fam. Ct. 1970).

[96] However, there is a disagreement among courts as to whether a family court, exercising its inherent authority to purge its own records, also has inherent authority to reach police records. *See*, for example, *Statman v. Kelly*, 264 N.Y.S.2d 1008 (N.Y. Fam. Ct. 1970), which held that a Family Court could not order police agencies to purge juvenile records on the basis of the Family Court's inherent authority.

[97] *Id*. at p. 1014.

[98] *Supra*, note 91 at p. 1230. *And see*, *United States v. Heller*, 435 F.Supp. 955, 956 (N.D. Ohio 1976) stating that, "Absent specific statutory language the general power of the courts to expunge is limited and will only be exercised in extreme cases, e.g., where an arrest is unlawful; where the arrest represented harassing action by the police or where an arrest was prosecuted pursuant to an unconstitutional statute."

[99] *Henry v. Loony*, 317 N.Y.S.2d 848, 851-852 (Sup. Ct. N.Y. 1971); *S. v. City of New York*, 347 N.Y.S.2d 54, 56 (Sup. Ct. N.Y. 1973); *and see* cases discussed in SEARCH Technical Report No. 27, *supra*, note 88 at p. 7; *and see*, Volenick "Juvenile Court and Arrest Records," *Clearinghouse Review* 9: 169 (July, 1975).

[100] 424 U.S. 693 (1976).

[101] *See* cases discussed in SEARCH Technical Report No. 27, *supra*, note 88 at pp. 10-11.

[102] Monroe v. Teilsch, supra, note 59 at p. 251 (Wash. 1974); and T.N.G. v. Superior Court of the City and County of San Francisco, supra, note 53.

[103] 18 U.S.C. §5038(a)(1).

[104] Monroe v. Tielsch, supra, note 59 at p. 251.

[105] See, Coffee, supra, note 56 at p. 595.

[106] See, In re Corey, 72 Cal. Rptr. 115, 118 (1st Dist. 1968).

[107] Supra, note 33 at p. 550.

[108] Id. at pp. 563-564.

[109] Coffee, supra, note 56 at p. 575.

[110] Petersila, "Juvenile Record Use in Adult Court Proceedings: A Survey of Prosecutors," J. of Crim. L. and Criminology, 72: 1746, 1750 (1981).

[111] 18 U.S.C. §5038(a)(1).

[112] 564 F.2d 1373, 1375-1376 (9th Cir. 1977). The Court pointed out that there is no legislative history to provide guidance in interpreting the bare statement in the Act authorizing disclosure in response to "inquiries received from another court of law." Id. at 1375. The Federal Youth Corrections Act also authorizes the release of juvenile records to "any agency preparing a presentence report for another court."

[113] A somewhat typical state statutory provision (except for the reference to access by the juvenile court) reads as follows:

> "no adjudication, disposition, or evidence from a juvenile proceeding is admissible against a child in any criminal or other action, except in subsequent juvenile

proceedings involving the same child or as an aid to sentencing in a later criminal proceeding against the same person."

[114] Alabama, Alaska, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, Washington, West Virginia and Wyoming.

[115] Alabama, District of Columbia, Illinois, Indiana, Iowa, Maryland, Montana, New York, North Dakota, South Dakota, Vermont, Virginia, Washington, West Virginia and Wisconsin.

[116] See, for example, Massey v. State, 256 A.2d 270, 272 (Del. 1969); Neely v. Quatsoe, 317 F.Supp. 40, 42 (E.D. Wis. 1970); and see several hundred cases reaching this same conclusion cited at 64 ALR 3d 1291. The only decisions which reach a different result appear to be a handful of Illinois state court decisions also cited at 64 ALR 3d 1291.

[117] Williams v. New York, 337 U.S. 241, 243 (1949).

[118] 144 A.2d 367, 369 (Pa. 1958).

[119] This provision has since been amended to expressly permit juvenile records to be used in adult sentencing.

[120] Supra, note 118 at p. 371 quoting Commonwealth v. Johnson, 35 A.2d 312, 314 (Pa. 1944).

[121] Id. at 371, quoting Commonwelth ex rel. Czarnecki v. Stitzel, 115 A.2d 805, 806 (Pa. 1955).

[122] Lange v. State, 196 N.W.2d 680, 685 (Wis. 1972).

[123] See, State v. Flores, 511 P.2d 414, 416 (Or. 1973); Stockwell v. State, 207 N.W.2d 883, 889 (Wis. 1973) and the

cases cited at 64 ALR 3d 1291, §5; C. F. State v. Corral, 521 P2d 151, 153 (Ariz. 1974), holding that any lack of rights enjoyed by juvenile offenders is constitutionally irrelevant to the use of the juvenile record in an adult sentencing proceeding.

In many respects the holding in this case makes more sense than the rule that "tainted" convictions cannot be used, if in fact courts are going to accept, as the court in Lange v. State did, mere detention records, without a disposition.

[124] 64 ALR 3d 1291, supra, note 116.

[125] 353 N.Y.S.2d 630, 632 (Sup. Ct. N.Y. 1974).

[126] However, a few state codes have adopted broad language which potentially could be interpreted to permit various other uses of juvenile records in criminal courts. Delaware permits the use of juvenile records by "other courts and public agencies." New Jersey authorizes use by "any court," and Wyoming authorizes disclosure to "another court of law." Nebraska provides that juvenile court records may be made available to "criminal courts for confidential use in matters pending before the court." North Carolina law provides that the juvenile record confidentiality provisions shall not preclude the "necessary storing of information among authorized agencies."

[127] Davis v. Alaska, supra, note 35 at p. 319; and see annotations at 63 ALR3d 1112 §4. Prior to Davis, the general rule was that a juvenile record could not be introduced to cross-examine or impeach a prosecution witness. While there is some authority for the proposition that the rule survives even after Davis (by distinguishing Davis in that the witness in Davis was on probation), the better view today seems to be that a juvenile record can be introduced to impeach a prosecution witness. In other situations where the defendant has shown that fundamental fairness demands the introduction of juvenile record

evidence, the courts have also acquiesced. For example, *State v. Brown*, 334 A.2d 392, 394 (N.J. 1975) held that a defendant could introduce a victim's prior juvenile record of assault in an assault prosecution, at least when the victim had a juvenile petition pending or was on probation.

[128] *See*, cases annotated at 63 ALR3d 1112 §6; *and see*, *State v. Allen*, 361 A.2d 5, 11 (N.J. 1976) which held that a prosecutor could get access to a defense witness' social records in order to determine whether to obtain a psychiatric examination of the witness.

[129] 63 ALR 3d 1112, §5; *and see*, *People v. Rhem*, 271 N.Y.S. 2d 751, 757 (N.Y. Sup. Ct. 1966).

[130] 63 ALR 3d 1112, §4(b); *and see*, *State v. Cox*, 327 N.E.2d 639, 642 (Ohio 1975).

[131] Petersila, *supra*, note 110 at p. 1748.

[132] 63 ALR3d 1112 §8.

[133] *See*, for example, *United States v. Chacon*, *supra*, note 112 at pp. 1375-76.

[134] South Carolina's juvenile code, for example, authorizes a defendant in a civil proceeding to obtain and use the plaintiff's juvenile record if relevant; *and see*, *State in the Interest of A.S. a Juvenile*, 327 A.2d 260, 261 (N.J. 1974), which held that a court could inspect the transcript of a juvenile defendant's allegedly inconsistent prior testimony in a juvenile adjudication.

[135] Indiana and New Jersey, for example, authorize the victim of a juvenile offense to use the juvenile records in a civil action against the offender; *and* in *Aetna Casualty and Surety Company v. Barnard*, 227 N.W.2d 551, 553 (Mich. 1975) the Court held that insurers, as subrogee of victims, could obtain *police* records of the juvenile of-

fenders because the statutes limiting access to juvenile court records did not apply to police records; but see, State of New Jersey in the Interest of S.F., a Juvenile, 353 A.2d 573, 575 (N.J. 1976), which held that a juvenile adjudication transcript could not be introduced in a wrongful death action arising out of the same event, where the juvenile offender was available to testify.

[136] 18 U.S.C. §5038(a)(3).

[137] California, Delaware, District of Columbia, Florida, Indiana, Iowa, Louisiana, Montana, New Jersey, New Mexico, New York, North Carolina, Virginia and Washington.

[138] Alabama, District of Columbia, Indiana, Iowa, Kansas, Maryland, Montana, New Jersey, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, Vermont, Virginia, Washington and Wisconsin.

[139] 28 C.F.R. Part 20.

[140] Supra, note 125 at p. 632 (Sup. Ct. N.Y. 1974). See also, Dugan v. Police Department, City of Camden, supra, note 61 at p. 728; and Monroe v. Tielsch, supra, note 59 at pp. 251-252.

[141] See, text at notes 82-84, supra.

[142] "End of Secrecy," supra, note 2.

[143] See, Gardner v. Florida, 430 U.S. 349, 361 (1977).

[144] But see, State of New Jersey in the Interest of D.G., a Juvenile, 416 A.2d 77, 81 (N.J. 1980), which denied a father's request for access to all records concerning his 15-year-old daughter. The daughter had been promised that her social records would be kept confidential, and material in those records indicated hostility between the father and daughter.

[145] 538 P.2d 373, 381 (Ct. App. Or. 1975).

[146] 18 U.S.C. §5038(c).

[147] Altman, *supra*, note 77 at p. 7.

[148] Skoler and Tenney, "Attorney Representation in Juvenile Court," *Journal of Family Law* 4: 77, 86-87 (1964).

[149] *Supra*, note 27 at p. 561 (1966).

[150] 343 F.2d 278, 282 (D.C. Cir. 1964); *and see*, *Joe Z. v. Superior Court of Los Angeles County*, 478 P.2d 26, 31 (Sup. Ct. Calif. 1970), holding that the juvenile court exceeded its discretion in denying discovery to a juvenile arrested for murder and assault. The juvenile sought access to all his statements, admissions and conversations with police which he alleged were necessary for preparation of his defense; *but see*, *In re W.R.M.*, 534 S.W.2d 178, 180 (Tex. 1976), holding that a juvenile defendant's attorney does not have an absolute right to inspect the prosecution's report on the juvenile which included psychiatric data.

[151] 18 U.S.C. §5038(a)(1-6).

[152] 28 C.F.R. §20.21(d) and 20.21(b)(4). It is not clear whether this provision applies to courts, since the Regulations exempt "court records of public judicial proceedings" (§20.20(b)(4)), but otherwise apply to all state or local agencies handling "criminal history record information" funded in whole or in part with LEAA monies. Since juvenile court records are ordinarily not considered to be court records of "public judicial proceedings," it may be that the Regulations do apply. The Regulations also require that researchers insure that the data they obtain will be handled pursuant to the detailed and comprehensive confidentiality and security standards mandated for researchers in 28 C.F.R. §524(a).

[153] Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maine, Mississippi, Missouri, New Mexico, South Dakota, Utah, Virginia, Washington and West Virginia.

[154] *Petersilia*, *supra*, note 110 at pp. 1747, 1748; and Aciessohn, *supra*, note 42 at pp. 61, 62.

[155] 18 U.S.C. §5038(a). The only exception made by the federal law is to permit disclosures of disposition information to the victim. §5038(a)(6).

[156] 28 C.F.R. §20.21(d).

[157] In *John Doe v. County of Westchester*, 358 N.Y.S.2d 471, 477 (App. Div. 1974), a New York State court held that under New York law a juvenile adjudication is confidential and may not be made available to any person. Thus, a county sheriff could not disclose to a United States Army representative information regarding an enlistee's prior juvenile arrest and adjudication.

[158] *See*, *People v. Y.O. 2404*, 291 N.Y.S.2d 510, 513 (Sup. Ct. 1968), holding that juvenile records are never available to a member of the public unless he has a court order; and *Application of Lascaris*, 319 N.Y.S. 2d 60, 62 (Sup. Ct. 1971), holding that the Commissioner of Social Services for a county could not release juvenile data to the news media unless the media had first obtained a court order.

[159] *Supra*, note 59 at p. 255.

[160] *Id*.

[161] *See*, for example, *T.N.G. v. Superior Court of City and County of San Francisco*, *supra*, note 53 at pp. 988-989 (Calif. 1971).

[162] *President's Comm. on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime* (1967) at p. 54.

[163] *In re Gault*, *supra* note 6 at p. 24 (1967).

[164] *In re Gault*, *supra*, note 6 at pp. 24-25.

[165] *In re Smith*, 63 Misc.2d 198, 200, n. 2 (N.Y. Fam. Ct. 1970).

[166] Coffee, *supra* note 56 at p. 590.

[167] *Report of the Governor's Special Study Commission on Juvenile Justice*, Part I - *Recommendations for Charges in California's Juvenile Court Law* (1960) p. 47; Cashman *supra*, note 81 at p. 34; and see "Juvenile Delinquents," *supra*, note 59 at p. 784.

> "Employers denied information from juvenile courts often get the desired facts from police."

[168] "Juvenile Delinquents," *supra*, note 54 at pp. 784-785.

[169] "Juvenile Delinquents," *supra*, note 54 at p. 800.

[170] *T.N.G. v. Superior Court, supra*, note 53 at p. 988 (Calif. 1971); *and see*, Baum, "Wiping Out a Criminal or Juvenile Record," *State Bar J*. 40; 816, 826 (1965).

[171] "Delinquency Hearings," *supra*, note 43 at p. 124 n. 5.

[172] Iowa Code §232.39 (1979).

[173] *In re R.L.K.*, 269 N.W.2d 267, 269 (Minn. 1978); *Brian v. Superior Court*, 20 Cal. 3d 618, 623-26 (1978).

[174] The courts have held consistently that from a constitutional standpoint there is no distinction between the public and the media. *See*, SEARCH *Privacy and Security of Criminal History Information: Privacy and the Media*, U.S. Department of Justice, Bureau of Justice Statistics (1979) at pp. 4-5.

[175] *Supra*, note 38 at p. 104.

[176] *Supra*, note 37 at p. 310.

[177] SEARCH, *supra*, note 174 at pp. 47-49; *and see*, *Gannett v. DePasquale*, *supra*, note 175 at p. 383.

[178] *R.L.R. v. State*, 487 P.2d 27, 39 (Sup. Ct. Alaska 1971), holding that a child may open an adjudicative or dispositive hearing; and *In re Burrus*, 169 S.E.2d 879, 887 (Sup. Ct. of N. Car. 1969), holding that a child's request to open a juvenile proceeding need not, indeed in most cases, should not be honored.

[179] *In re Burrus*, *supra*, note 178 at p. 887.

[180] *Supra*, note 6 at p. 25; *and see*, *In re Jones*, 263 NE2d 863, 864, 865 (Ill. 1970), a juvenile moved for exclusion from the court of all witnesses, the public and the media. The Illinois Supreme Court, interpreting the Illinois juvenile act, refused to find fault with the juvenile court's ruling that the press could stay in the courtroom.

[181] 18 U.S.C. §5038(d)(2).

[182] *Supra*, note 38 at pp. 104-105 (1979). *Smith* overturns an earlier federal court decision in *Government of Virgin Islands v. Brodhurst*, 285 F. Supp. 831, 836, 837 (D. Vir. Islands 1968); *and see*, *Ithica Journal News, Inc. v. City Court*, 294 N.Y.S.2d 558, 564 (Sup. Ct. N.Y. 1968). However, the decision in *Smith* was anticipated by the New Mexico Court of Appeals in *Poteet v. Roswell Daily Record, Inc.*, 584 P.2d 1310, 1313 (N.M. 1978); *and see*, "*Poteet v. Roswell Daily Record, Inc.*: Balancing First Amendment Free Press Rights Against a Juvenile Victim's Right to Privacy," *N. Mex. L. Rev.*, 10: 185 (Winter, 1979-1980); and "Freedom of the Press vs. Juvenile Anonymity: A Conflict Between Constitutional Priorities and Rehabilitation," *Iowa L. Rev.* 65: 1471 (1980).

[183] Supra, note 38 at p. 102, citing Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, at pp. 491-492 (1975) wherein the Court struck down a Georgia statute which prohibited the publication of a rape victim's name, on the grounds that the media must be permitted to publish such information once it is in the "public domain."

[184] See, Branzburg v. Hayes, 408 U.S. 665, 684 (1972).

[185] Smith is consistent with the Court's earlier decision in Oklahoma Publishing Co. v. District Court in and for Oklahoma County, supra, note 37 at p. 310 upholding the press' right to publish the name and picture of a juvenile defendant after that data was already in the "public domain."

[186] "End of Secrecy," supra, note 2.

[187] Howard, Grisso and Neems, "Publicity and Juvenile Court Proceedings," Clearinghouse Rev. 11:203 (1977).

[188] "Juvenile Delinquents," supra, note 54 at 794.

[189] Gardner, "Publicity and Juvenile Delinquency," Juv. Ct. Judges J. 15:29 (1964). And see, Supreme Court Justice Rehnquist's concurring opinion in Smith v. Daily Mail, wherein he notes, "[T]his exposure ...provide[s] the hardcore delinquent the kind of attention he seeks, thereby encouraging him to commit further anti-social acts," supra, note 37 at p. 108. See also, Davis v. Alaska, supra, note 35 at p. 319.

[190] Orlando and Black, 'Classification in Juvenile Court: The Delinquent Child and the Child in Need of Supervision." Juv. Just. 25: 13, 22, 23 (1974). And see, "Delinquency Hearings," supra, note 43 at pp. 153-154.

[191] Howard, Grisso and Neems, supra, note 187 at pp. 209-210.

[192] See, Coffee, supra, note 56 at p. 593; and see "Negative Labels: Passageways and Prisons," Crime and Delinq., 19: 33, 35 (1973); Faust "Delinquency Labeling: Its Consequences and Implications," Crime and Delinq., 19: 41 (1973).

[193] This is the same juvenile and the same event which was the subject of the secrecy battle in Oklahoma Publishing Co. v. District Court in and for Oklahoma County, supra, note 37.

[194] Howard, Grisso and Neems, supra, note 187 at pp. 208-211.

[195] Geis, supra, note 13 at 121-123.

[196] 413 A.2d 335, 342 (N.J. 1980).

[197] Id. at p. 342.

[198] "Delinquency Hearings," supra, note 156 at p. 155.

[199] See, Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status," Wash. U.L.Q. 1966:147, 168-74; and see also, supra, note 162 at pp. 92-93.

[200] Supra, note 38 at pp. 107-108.

[201] "Delinquency Hearings," supra, note 43 at p. 157.

[202] See, The Serious Juvenile Offender: Proceedings of a National Symposium, supra, note 20 at pp. 175-181; and see, Fox, "The Reforms of Juvenile Justice: The Child's Right to Punishment," Juv. Just., Aug. 1974, pp. 2-9; and Wilson, "Crime and Criminologists," Commentary, July 1974, pp. 47-48.

[203] "Delinquency Hearings," supra, note 43 at p. 153-154, n. 115, and Ariessohn, supra, note 42 at p. 61.

[204] "Delinquency Hearings," *supra*, note 43 at p. 1[illegible].

[205] *See*, McCarthy, "Role of the Concept of Responsibility in Juvenile Delinquency Proceedings," *U. Mich. J.L. Rel.* 10: 181, 215-216 (1977).

[206] "Freedom of the Press vs. Juvenile Anonymity," *supra*, note 182 at p. 1485.

[207] Delaney, *supra*, note 25 at p. 5.

[208] *Tulsa Tribune*, Feb. 13, 1957, as quoted in Geis, *supra*, note 13 at p. 120.

[209] *Id*.

[210] Delaney, *supra*, note 25 at p. 5.

[211] *In the Interest of B.C.L.*, *supra*, note 196 at p. 343.

[212] Hoover, 26 *FBI Law Enforcement Bulletin*, as quoted in Geis, *supra*, note 13 at p. 120.

[213] *People v. Williams*, 410 N.Y.S.2d 978, 985-986 (Dutchess County, 1978).

[214] *R.L.R. v. State*, *supra*, note 178 at p. 28 (Alaska 1971).

[215] "End of Secrecy," *supra*, note 2.

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